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LAND REGISTRATION AND INFORMATION SERVICE
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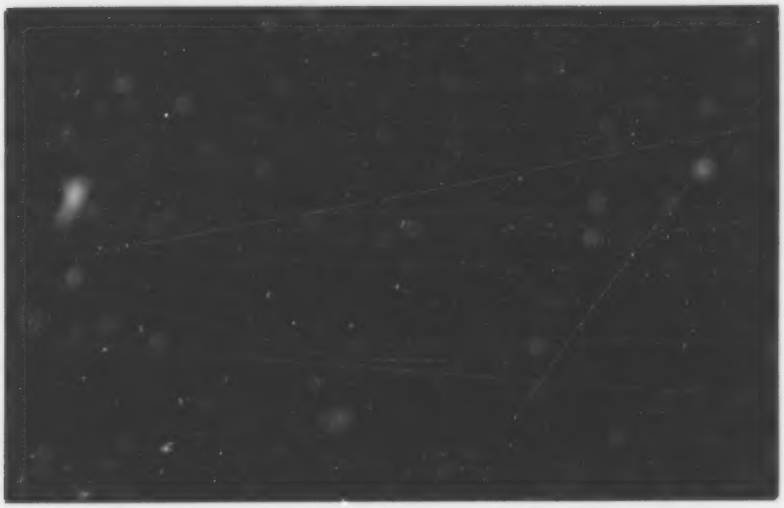

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ALBERT COUNTY
LAND TITLES
PILOT PROJECT

J. F. Doig
August 1987

Report
on
LAND TITLES PILOT PROJECT
conducted within
ALBERT COUNTY
New Brunswick

9 July 1984 to 31 March 1987

by the

Land Registration and Information Service
Council of Maritime Premiers

under the direction of

Department of Justice
Province of New Brunswick

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ABSTRACT

From its inception as a province in 1784 New Brunswick used the registry system to keep track of interests in land.

Land titles legislation, in the form of the New Brunswick Land Titles Act, was developed so as to be compatible with existing legislation of the Province. This work was done jointly by the Provice of New Brunswick and the Land Registration and Information Service, Council of Maritime Premiers.

Albert County was designated as a land titles district in 1984. A pilot project based upon the compulsory registration of land under the land titles system on transfer for valuable consideration, was operated from July 1984 to March 1987. During this period 2,348 parcels were recorded under land titles. This was 17% of all the parcels in the pilot district.

The pilot was operated by the Land Registration and Information Service under the direction of the Department of Justice, Province of New Brunswick.

PREFACE

The aim of this report is to give an account of the Albert County Land Titles Pilot and its background.

The pilot project was located in Moncton. Operational direction came from Halifax and policy decisions which affected it were made in Fredericton. There was neither time nor staff available to do other than the preparatory planning for the pilot, and the work which had to be done while it was in progress. Daily statistical reports were made and issued during the project; but efforts had to be directed to solving problems rather than to describing what was happening. This report tries to tell the story of the pilot and what led up to it.

The central theme of the report is that the N.B. land titles system is up-to-date and compatible with existing legislation.

It is anticipated that the report will be helpful to those who may be considering a move from a registry system to one based upon land titles. Changes in another jurisdiction would involve some factors different from those in New Brunswick, but these probably would be within the field of existing legislation for the most part. Many factors, however, would be the same or rather similar.

The background material on the Atlantic Provinces and New Brunswick is intended to be helpful to those outside the region. More comprehensive material is of course readily available from other sources. Appropriate entries in **The Canadian Encyclopedia** are good places to start.

The report was written with the general reader in mind. One who is trained in law, surveying, land information management, property mapping or cartography will find some of the contents a bit elementary. The concern throughout has been for the reader who may not be familiar with many of the matters directly involved with title to land and with mapping. Detail, for the most part, has been placed in appendices to the main report.

The pilot was a particularly good example of the capacity of the Land Registration and Information Service, Council of Maritime Premiers, to respond to the needs and desires of individual provinces while carrying on with the work common to all three.

Land is the source of all material wealth. From it we get everything we use or value, whether it be food, clothing, fuel, shelter, metal or precious stones. We live on the land and from the land, and to the land our bodies or our ashes are committed when we die. The availability of land is the key to human existence and its distribution and use are of vital importance. Land records, therefore, are of great concern to all governments. The framing of land policy, and its execution, may in large measure depend on the effectiveness of "land registration", as we can conveniently call the making and keeping of these records.

> Simpson. S.R. 1976. Land Law And Registration, Cambridge University Press.

Registration of title is not a machine-made product, always and everywhere the same. It differs in different countries with the legal system to which it is applied and according to the special and differing needs of different communities.

> Stewart-Wallace, Sir J.S. 1931. Land Registration in England in Relation to Maps and Surveying. Proceedings of Empire Survey Officers' Conference.

Systems which are appropriate to the situation in one country cannot necessarily be transplanted to another where conditions may be significantly different. In almost all circumstances social, political and environmental pressures have combined with history to produce a situation wherein there are marked variations not only between countries but often between States and Provinces within individual countries. Developments in the cadastral field tended to cease in the late 19th or early 20th century, and in many countries the systems became and remain static. Pressures for change have now arisen in which the increasing complexity of 20th-century life is creating problems which, in practice, only modern technology can handle. The evolutionary process is beginning again. Within the Commonwealth, the Torrens approach to registration of title is becoming generally accepted, but the systems of land records and survey which support that approach remain diverse.

> Dale, P.F. 1976. Cadastral Surveys within the Commonwealth, Overseas Research Publication No. 23, H.M. Stationery Office.

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1.0 PRELIMINARIES

The Atlantic Provinces

1.01 For a short time, considerations which were to lead to the land titles pilot project involved not only the Maritime Provinces of Canada, but the Province of Newfoundland as well. Taken together these four form the Atlantic Provinces. New Brunswick, Newfoundland, Nova Scotia and Prince Edward Island as a whole have a population of 2,234,000 or about 9.3% of that of Canada, within some 539,000 square kilometers or 5% of the country's land area. The provinces obviously share many things in common by reason of their location and their economic circumstances. There are differences, however, which may not be apparent to observers at a distance.

1.02 Prince Edward Island, although the smallest of the Canadian provinces, has the most concentrated population at 21 persons per square kilometer. Yet it remains the most rural with only 36% of its residents classed as urban. Its two major resources are agriculture and fishing. Almost 90% of New Brunswick is forested; thus this province is dependent upon lumbering, pulp and paper, hunting and fishing to an extent greater than any other. Its population density is about 10 persons per square kilometer, with 47% living in urban locations. Newfoundland (and Labrador) are larger in area than the other three provinces combined, with a population density of 1.5 persons per square kilometer of whom 58% are urban dwellers. Minerals, forests, and water for hydro-electric power generation are some of Newfoundland's natural resources. Her greatest are the fishery and the potential for hydrocarbons in the offshore. Nova Scotia has more diverse natural resources than the others; forestry, mining (principally coal), agriculture and fishing contribute to the economy. Population is about 16 persons per square kilometer, with 55% living in urban communities.

1.03 The Atlantic Provinces have one aspect of the law of real property in common. Until recently each province used only the registry system to keep track of the ownership of rights, interests, and title to land. All other provinces of Canada which have developed under the English common law (that is all except the Province of Quebec) have either a land titles system or a land titles system **and** a registry system.

1.04 A registry system provides a repository for documents relating to interests in land. Title or ownership to land is established by inspecting the documents on file in the registry and assessing their validity. Normally, at the end of a search, a solicitor will issue a certificate to the effect that an owner has good title or that he or she has title subject to certain qualifications. Each time the question of title to the same piece of land arises (usually on the change of ownership) a new search is made.

Atlantic Provinces
Surveying and Mapping Program

1.05 The land titles pilot project has its roots in a 1961 review of the existing conveyancing system by a one-man commission for the government of New Brunswick.[1] Further investigation and research was to be done under the Atlantic Provinces Surveying and Mapping Program (APSAMP). This program developed from discussions between W.F. Roberts, Director of Surveys, Province of New Brunswick, and members of the Atlantic Development Board (ADB) about the need for a regional survey and mapping program. Further discussions involved the Provinces of New Brunswick, Newfoundland, Nova Scotia, and Prince Edward Island, the federal Department of Energy, Mines and Resources (Surveys and Mapping Branch), and the National Research Council (NRC). Agreement was reached between them. On April 1, 1968 APSAMP was established with a $3.31 million grant from ADB apportioned $1,400,000 to New Brunswick, $923,000 to Nova Scotia and $1,008,000 to Prince Edward Island. The program was designed to control and coordinate survey and mapping activities within the Atlantic Provinces. In actual fact the work of APSAMP was to be within the Maritime Provinces; Newfoundland kept a watching brief on things as they progressed.

1.06 APSAMP called for the establishment of a system for survey control, the production of large scale mapping, the carrying out of research into land titles (for New Brunswick only),[2] and the eventual setting up of a data bank on resource information. The program was managed jointly by the provincial Directors of Survey (W.F. Roberts NB, H.B. Robertson NS, and N.L. Fleming PEI), a representative from the federal Surveys and Mapping Branch, NRC consultants, and members of universities and industries.

1.07 Given an initial term of two years, the program lasted four; it came to an end in April 1972. By that time the survey control and mapping phases were complete in Prince Edward Island. About 60% of the control work was completed in New Brunswick; about 20% was done in Nova Scotia. New Brunswick was producing its own maps; Nova Scotia was beginning to produce its own.[3]

Council of Maritime Premiers

1.08 Discussions and studies on the topic of the union of t[illegible] Maritime Provinces had been underway for some time. These resulted in the decision not to unite but to establish the Council of Maritime Premiers (CMP) to study matters of regional concern, to initate coordinated policies, and to undertake cooperative actions[4]. The Council came into being on May 25, 1971. The work assigned to APSAMP would become the direct responsibility of CMP after APSAMP terminated in 1972. In actual fact, the Land Registration and Information Service (LRIS) was formed as an agency of CMP in 1973 to look after these surveying and mapping commitments.

1.09 Discussions continued between CMP and the federal government (and within the provinces) as to feasible courses of action for the future of surveying and mapping, as well as land registration and of title systems. As a matter of fact in January 1972 the Cabinet of Nova Scotia adopted computerized land titles as a policy goal within a three-province integrated approach to registration and information systems.[5] In February CMP proposed a ten-year CMP/Canada agreement to modernize the system of land registration in the Maritime Provinces. The total cost was to be $24,149,000 of which $15,099,000 would be funded by the federal Department of Regional Economic Expansiion (DREE). On April 1, 1972 New Brunswick and Nova Scotia signed an interim agreement with Ottawa; Newfoundland entered into a separate arrangement. In June Prince Edward Island committed funds to the land registration and information proposal. APSAMP was at an end. The work it had begun was continuing, at least with respect to the Maritime Provinces, under the aegis of CMP.

1.10 In August 1972 it was clear that DREE had reservations about funding the work projected toward land titles, though DREE was prepared to encourage the region to undertake the project. In January 1973, however, DREE agreed to support the entire program on a 75/25% sharing with the Maritime Provinces. There was still a caveat of sorts; this was the observation that the financial strain of a land title system might slow the whole program down.[6]

1.11 In mid-February 1973 the provincial deputy ministers of justice or deputy attorneys-general approved specific terms of reference with respect to land titles work:[7]

a. a feasibility study of the project would begin as soon as funds were available;

b. the study leader would report to the three attorneys-general instead of to a central agency;

c. the study would include the examination of statutes dealing with land,

d. model legislation would be drafted for one land title system for the Maritimes.

Land Registration and
Information Service

1.12 On April 1, 1973 the Land Registration and Information Service (LRIS) came into being with W.F. Roberts as Executive Director. It was a separate agency of CMP charged with the responsibility for implementing the agreement made that spring with the government of Canada. Its task was outlined in four phases:

Phase 1: establishment of a second-order survey control system.

Phase 2: producton of maps of types and scales needed to meet the needs of resource management, urban development, and property identification.

Phase 3: conversion of the current registry system to one of land titles, using the survey and map data of Phases 1 and 2.

Phase 4: planning and feasibility studies for a regional land data retrieval system.

1.13 The detailed description of these stages, and how they would be coordinated and controlled was included as an attachment to the written agreement between Canada and CMP. Listed as well was a summary of progress made to date, and an estimate of the personnel needed and of costs to be incurred in the work. The agreement covered the period April 1, 1973 to March 31, 1978. The descriptive material referred to is attached as Annex "A".

1.14 As things then stood, Phase 3 of the LRIS program was to produce a land titles system in each province. Looking back from a point fourteen years later it is quite plain that this goal was an overly ambitious one. Yet if it had not been set, much less would have been accomplished. Indeed, by May 1973 Nova Scotia was having second thoughts about the desirability of going in the direction of land titles at all.[8] In any case, in 1980 as will be seen, the role of LRIS was to change from the production of a land title system to "the provision of assistance in the implememtation of an improved system of land registration." This would leave things open to each province to choose whatever mechanism it desired: improve its current registration system or change it altogether.

1.15 However in early 1973 the basic task was to address land titles on behalf of all three provinces.

1.16 This was easier said than done. For one thing, the first priorities for LRIS were to work toward the completion of the survey control system and to push on with map production. Secondly, there was no component within LRIS to advise what specific steps ought to be taken to begin the land titles program effectively. In 1973 LRIS consisted of surveyors, mappers, and planners. There was no internal legal expertise.

2.0 TAKING STOCK

LRIS Initial Priorities

2.01 Survey Control. A survey control system provides a consistent framework of visible points for the coordination of surveying and mapping activities within a particular area. The area may be a city, a county, a province, or a country. Control is the skeleton to which all subsequent surveying and mapping is attached. If individual surveys are internally correct and are attached to the control network, all will fit together in their proper relationship even though done independently by different people at different times. At any given time one can see how much has been done, the quality of the work, how much remains to be completed, and where. The whole affair is something like putting a jig-saw puzzle together with the advantage that one can put each piece in the right spot even though one has not yet found the pieces that eventually will go in beside it.

2.02 Horizontal control provides the means of fitting individual surveys, often some distance apart, into their correct relationship one to the other. Vertical control provides a series of points of known elevation above a reference plane which is usually sea level. Quite frequently a control point serves both horizontal and vertical purposes. That is, its elevation is known as are its distances and directions from other control points in the neighbourhood. Control points are located so that it is possible to see from each at least two others. Thus local features, and whole surveys, can be tied into the system by measured angles and measured distances to and from known points.

2.03 When aerial photographs are taken of the earth's surface, there is inevitable distortion in the photographic prints. This is because only a very small portion of the land surface is directly below the camera lens in the aircraft. Also the ground may not be level throughout the area being photographed, and the aircraft may be tilted as well. Horizontal and vertical control points, which can be identified in each photo, enable this distortion to be removed. Then, using the corrected photography, maps can be made to the proper scale.

2.04 Control points are marked by concrete cylinders sunk six feet into the ground and set flush with the surface. As of 30 Sep 85 there were 49,240 control monuments in the Matitime Provinces:[9]

New Brunswick	22,570
Nova Scotia	22,358
Prince Edward Island	4,312

2.05 Mapping. Two kinds of mapping are essential to meet the needs of resource management, urban development, and uniform property assessment. Base maps relate to resource management and urban development. Property maps address the needs of assessment and detailed municipal planning.

2.06 Base maps are produced for the whole land mass at a standard scale. Urban maps of selected areas are produced at larger scales so more detail can be shown. Base mapping for the Maritimes involved producing 4,716 map sheets at a scale of 1:10,000 (about one-sixth of a mile to the inch). Urban mapping required 6,353 sheets at scales of one inch to 100 feet, one inch to 200 feet and one inch to 400 feet depending on the area mapped. "First round" coverage was completed in 1984. Second round mapping is now underway with completion scheduled in about ten years.[10]

2.07 Base maps and urban maps show a range of agreed-upon features such as roads, rivers, lakes, railways, streets, subdivisions, and power lines. Specialist detail such as forest cover or mining claims, can be drawn on transparent overlays by those who are primarily concerned with this sort of information. When everyone uses the same base mapping, different overlays will fit properly when different kinds of information are brought together.

2.08 Property mapping is the process of identifying and representing the location of land parcels on a base map, assigning a unique identifying number to each parcel, and storing specific information about each parcel in a computer data base.

2.09 There are approximately 916,000 land parcels in the Maritime Provinces. Property mapping is completed in Prince Edward Island with 69,000 parcels identified. In New Brunswick about 363,000 parcels have been located; all counties have been completed except Sunbury and York which will be finished in 1987. There are about 300,000 parcels in Nova Scotia where the seven counties in the western part of the province remain to be done.[11] Property mapping involves not only the initial work of locating and portraying the properties, but a continuing program of maintenance to record the changes. Property mapping is being carried out now in most other provinces, following the lead given by the Maritimes. The general situation in 1986 was:[12]

Province	**Progress**
Newfoundland	Still under study
Nova Scotia	Started in 1973; two-thirds complete
Prince Edward Island	Started in 1970; completed 1972
New Brunswick	Started in 1970; virtually complete
Quebec	Major program announced recently
Ontario	Pilot projects underway
Manitoba	Still under study
Saskatchewan	Cities completed; starting rural areas
Alberta	Started in 1970; 80% complete
British Columbia	Started in 1980; 20% complete

Land Registration

2.10 Broadly speaking, within the legal framework provided by the English common law, there are two systems of keeping track of rights and interests in land. The one is the registry system; the other is the land titles system.

2.11 Registry Systems. There are a variety of registry systems. They differ from one another in a multitude of ways according to the social and legal system in which they are found. The principles upon which the systems operate are generally uniform. The fundamental purposes of a registry system are to:

a. give public notice of interests which are claimed in land;

b. establish priorities between claimants; and

c. provide an orderly method of recording, indexing and locating documents.

Registry systems are often described as passive systems. Documents are not examined by the registrar to determine either their effect or their validity. They are accepted for registration if they appear to be valid on their face; that is to say they must be in proper form and they must bear any required endorsements such as an attestation of witnesses' signatures, or a planning board approval.

2.12 When the question of validity of title is raised, a solictor searches in the registry and examines the documents which reflect an interest in that particular parcel. The solicitor's work results in an abstract of title. This is a sequential history of the parcel going back through some period of time. The period is either stipulated by law (often 40 years) or it may be governed by general practice in the locality. Regardless of general practice, under the common law the solicitor's responsibility is to take the search back to a good root of title. Each document referred to in the abstract must be examined to determine its effectiveness both with respect to its contents and from the point of view of whether it has been executed by the proper parties.

2.13 Once this has been done the solicitor gives an opinion on the validity, or marketability, of the title. Any defects revealed must be corrected by the vendor or be waived by the purchaser. The question of title usually arises when property is being sold. Each time the question comes up a new search must be made. Should a defect be subsequently discovered which bars a later sale, an owner might recover damages through a suit against the solicitor who certified valid title. The owner would have to show that the defect was one that a solicitor working in the registry system, and exercising normal care, would be expected to find.

2.14 Registry systems were developed in a day and age when property transfers were relatively infrequent, when communities were small, and where property owners were well known to each other. The system in Nova Scotia was established in 1754 and has been little modified in essentials since that date. The registry system in New Brunswick was adapted from that in Nova Scotia at the time the province was formed in 1784.

2.15 Within the Atlantic Provinces there is no compulsion to register a document reflecting an interest in land.[13] A registered document normally will take precedence over one which is not registered or one which bears a later registration.

2.16 Within a registry system, when title to real estate or any other interest in it is being passed from one party to another, the transaction takes effect upon the delivery of the deed which confirms it.

2.17 The cost of operating a registry system is normally met through registration, searching, and other fees paid by the users.

2.18 Land Titles Systems. There are a variety of land titles systems as well. They vary in detail according to the social and legal circumstances in which they are found. The generally recognized principles of a land titles system are:

a. The **curtain** principle. When land is brought under the system a title search is done one last time. Any defects or encumbrances on the title are shown on the record which is maintained in the registry. This record becomes conclusive evidence of title and encumbrances. One does not have to look behind it.

b. The **mirror** principle. A person who wishes to purchase property may rely upon the record as a true reflection of the state of title.

c. The **assurance** principle. Mistakes are bound to happen no matter how carefully systems are supervised and checked. Some mistakes can be rectified by correcting the record once the mistake has been discovered. In other instances correction is imposible or inappropriate. In such circumstances, those who suffer damage are compensated financially. Funds for such a purpose are often built up by contributions levied upon the users of the system.

2.19 The abstract of title necessary to bring a parcel under the system, the examination of this abstract, the changes made to the record as later transfers occur, and the system's capacity to correct mistakes or compensate for errors, makes the land titles system an active one as opposed to the passive registry system.

2.20 In the older land titles systems title passes only when the transfer is accepted and registered and the register changed to reflect it.

2.21 The cost of operating a land titles system is normally met through registration and other fees paid by users.

3.0 GETTING ORGANIZED

LRIS Legal Staff

3.01 In April 1974 C.W. MacIntosh QC became Director of Legal Services in the Property Mapping and Records Division of LRIS. He brought with him from his Halifax law practice his legal secretary, Mrs. Claire Burbridge, and Lynne Gavin a solicitor. LRIS now had the beginnings of the legal expertise needed to carry land titles work further. The Service also had the staff required to provide advice and guidance in legal matters relating to surveying, mapping, and contract administration.

3.02 Other individuals joined the staff for different periods of time during subsequent years. Those who contributed to projects involving land titles in one form or another were: Janice Henderson, legal secretary, Michael Watson, law student, and solicitors Susan Ashley, Ian Darrach, Lucy Kerr, Mary Kimball, Sarah MacKenzie, Rosalind Penfound, Michael Richard, and Valerie Shapiro.

Terms of Reference

3.03 The first step, subsequent to the acquisition of a legal staff, was to produce terms of reference for determining the most feasible way of applying land titles to the Maritime Provinces.

3.04 The terms of reference, which are attached as Annex "B", embraced a study of the existing registry systems as well as an examination of the LRIS Phase 3 implementation program as earlier drafted by the planning staff.[14]

3.05 Once work was underway it was clear that the terms of reference had to be expanded. They were not broad enough to cover all the activities necessary to answer the questions posed in the terms of reference themselves.[15] Specifically:

a. intentions had to be publicized through meetings with the Bar associations;

b. particular problems had to be addressed with respect to the location of existing registry offices;

c. existing land titles legislation had been modelled upon systems in place before the advent of modern technology;

d. very recent developments in communication technology suggested some of the initial planning proposals needed modification; and

e. microfiche and microfilming processes had to be reviewed.

Legal Research

3.06 In order to address some of the questions raised in the terms of reference it was necessary to make a comparative study of existing property law in the three provinces.

3.07 The following was done by regular staff, engaging legal researchers or through contracts with legal firms:[16]

a. abstracts were made of Nova Scotia cases involving real property recorded in the Nova Scotia Reports, the Maritime Provinces Reports and the Eastern Law Reporter. Significant Nova Scotia cases found in the Dominion Law Reports and in the Canada Law Reports were included as well;[17]

b. a summary was made of the Public Statutes of Nova Scotia[18] and every Nova Scotia statute from 1752 was examined to identify private and local acts which might relate to the study;[19]

c. Nova Scotia statutes which concerned the Registry of Deeds were listed. Particular reference was made to those which might require amendment or modification if a land titles system were brought into being;

d. a summary was made of the general and private acts of Prince Edward Island as in b.above;[20]

e. research was done in selected areas of New Brunswick case law;

f. a catalogue of New Brunswick private and local acts was produced, together with a compilation of New Brunswick public acts;[21]

g. summaries were made, in tabular form, of the land titles acts of each of Ontario, Manitoba, Saskatchewan, Alberta and British Columbia. These offered ready comparison of similarities and differences;

h. special attention was directed to a number of specific areas such as probate, proof of wills, general conveyances, and guaranteed boundaries legislation.[22]

3.08 During the course of the research the differences in the law of the three provinces were noted. Some of the differences were rather surprising considering the similarities shared by the three jurisdictions. The ownership of public roads, fishing rights, descent of property, and joint tenancy are specific cases in point. If, for example, in Prince Edward Island two or more parties are grantees to a deed, in the absence of words to the contrary, they take as joint tenants and not as tenants in common. This is precisely the opposite to the situation in New Brunswick and Nova Scotia and in most other common law jurisdictions.

Legislative Drafting

3.09 Legislative drafting involves rather more than writing things down, though this is certainly part of the work. The principal concerns are:

a. deciding what to do;

b. finding out how this will affect what is currently being done; and

c. putting ideas into words.

3.10 Clearly, one must know -- or more usually -- find out what the existing law is upon matters at issue. This requires legal research within the statutes of the home jurisdiction and research directed to what is done within jurisdictions elsewhere. Others may have developed ideas and procedures which can be adapted or adopted. At the same time new proposals must be discussed with those parties who will be affected by change. A new concept or procedure welcomed enthusiastically by an agricultural agency, for example, may pose great difficulties for a housing or planning commission.

3.11 Legislative drafting, done well, is a lengthy process which involves research, consultation, discussion, and drafting and re-drafting a series of successive documentary approximations until the desired result is achieved. It is the work of many hands. The Maritime Land Titles Act may well have gone through forty drafts. Prior to the establishment of LRIS, resources did not exist within the Maritimes for such an exhaustive and detailed analysis of what would be needed to produce reform in this portion of the law of real property. Some of the larger provinces, using resources provided by government, universities, and the provincial law societies, have full-time staff devoted to legal research and legislative drafting.

Maritime Land Titles Act

3.12 Instead of making an exhaustive examination of existing land titles acts, it was decided to pass them over in favour of evolving a new land titles system to match available technology. Canadian land titles legislation existing in 1974 had had its beginnings as follows:

British Columbia	1869
Ontario	1885
Manitoba	1885
Saskatchewan	1886
Alberta	1886
NorthWest Territories	1886
Nova Scotia	1903 [23]
New Brunswick	1914 [24]
Prince Edward Island	1971 [25]

3.13 The Torrens system, very clearly reflected in this legislation, was devised in 1856, before the development of modern technology. Furthermore the Torrens system has features which are no longer acceptable in modern society. The principal of these are: delay because all transactions must be approved by the Master of Titles; and uncertain location, because reliance is placed in many cases on an original township subdivision, and modern plans have not been prepared.

3.14 It was evident that existing systems should not just be transplanted. Moreover, some of these systems were even then under critical review in their own jurisdictions.

3.15 Furthermore, existing legislation within the Maritime Provinces was not satisfactory. The Nova Scotia Act was modelled on the English Act of 1875. The New Brunswick Act had no assurance fund, nor did procedures exist with respect to transfers and mortgages; The Prince Edward Island legislation was based upon legislation of western provinces which was not fully attuned to modern legal thought or to technology.

3.16 A new land titles act, uniform in application, was envisaged for each of the provinces. Administration of these acts would be by one group of officials -- the Maritime Land Titles Board. Issuance of a certificate of title would have the effect of a guarantee of title, of location of the property, of integrity of boundaries, and hence of transferability. Registry of Deeds systems would be maintained until all properties in an area were under the system, either by request of the owners or by order of the Board.

3.17 The Act would incorporate the mirror, curtain, and assurance principles. It was envisaged that the system would err in favour of granting certificates in doubtful cases rather than make fine legal distinctions or give excessive weight to claims of persons long absent who had not contributed to the maintenance of the property. Lacking this approach, the Act would not benefit the rural owner.

3.18 The forms of deed transfer and of mortgage would be simplified, the latter through the employment of standard clauses. That is to say, individual conditions appropriate to mortgages were identified by uniquely numbered clauses. The conditions required to be specified in any particular mortgage could, then, be identified by listing the numbers corresponding to the appropriate clauses. This arrangement reduces the amount of clerical work in preparation of documents and reduces the amount of space needed in which to store copies.

3.19 As it turned out, the Maritime Land Titles Act was not used. If land titles were to come to the Maritimes, it would be through the provinces individually rather than through an umbrella arrangement. The Maritime Act had been drafted using concepts employed in all three provinces, to which some new but neutral ones were added. Nevertheless the Maritime Act was modified to a considerable extent to incorporate long-standing practices within New Brunswick to become the N.B. Land Titles Act.[26] The Maritime Act umbrella, as it were, was transformed into a provincial one with provincial laws left pretty well as they had been.

Ancillary Legislation

3.20 When taking new directions there is an obvious need for new legislation. Other legislation, more often than not, will be required as well. In developing the Maritime Land Titles Act there were needed, in each province:

a. major packages of new legislation; and

b. major amendments to existing legislation.

Since the Act was not proceeded with, a detailed account of these changes would be inappropriate here.[27] Reference to ancillary legislation relating to the N.B. Land Titles Act is to be found at para. 4.24. One major undertaking in connection with the Maritime Act should be noted, however, at this stage.

Boundaries and Encroachments Act

3.21 This was developed to provide for the resolution of boundary disputes or situations where a person mistakenly makes improvements to or builds upon another's land.[28] There is within the Atlantic Provinces no statutory provision for the resolution of boundary disputes unconnected with a question of title. Neither are there statutory obligations for the sharing of the costs of any survey work needed to help resolve a dispute. There is no obligation (other than a moral one) upon any adjoining owner to defray the cost of the re-survey which retraces or recovers his uncertain or lost boundary line. If the adjoining owner likes the result of the survey he may accept it; if he doesn't he can challenge it. In neither case does he have to bear any part of the expense of it unless he has earlier and voluntarily agreed to do so. The action for trespass remains by far the most commonly utilized device for settling boundary disputes. In the great majority of trespass cases the real question is the location of one or more boundaries. The court must fix the disputed line in order to determine whether or not a trespass had been committed.

3.22 The proposed Act addressed boundary problems as well as situations where a person has encroached upon another's land, or has built a structure wholly or partly on another's land. It provided that the Registrar-General under the Land Titles Act would have jurisdiction to hear and determine any application for relief. Since most cases could be disposed of by the Registrar-General in a quasi-judicial setting, proceedings would take less time and cost much less than they do under current rules. The courts would remain available for trial of the more complex cases and for appeal from the decisions of the Registrar-General. On the other hand, where in any matter before the courts, it were thought the issue might more appropriately be dealt with by the Registrar-General, the matter might so be referred. The registration of plans of survey and of other instruments would have been compulsory.

Procedures Manual

3.23 The implementation of a land titles system represents a significant change from the registry system. A land titles manual was prepared to assist registrars and their staffs to fulfill their functions under the Land Titles Act. The manual examines the land title forms in detail and specifies the checks to which each instrument is subjected prior to first registration. It explains land titles concepts and provides references to the sections of the Act and the regulations as they apply at various stages of the registration process. Forms, certificates, and orders which may apply from time to time subsequent to first registration, are similarly explained and referenced to the Act and regulations.[29]

4.0 PREPARATION

Assessment Within N.B. Government Departments

4.01 A study was made in 1978 of the implications to government departments involved in land transactions, were land titles to be implemented.[30] The study was done by a member of the provincial Department of Justice and a member of the Systems and Planning Division of LRIS. Twelve departments or agencies were surveyed. The work was carried out through the study team explaining in some detail the features of the proposed land titles legislation, the concept of integrated surveys and the concept of guaranteed boundaries. The study tried to determine the benefits, costs and savings to parties involved. Based upon the assumptions stated in the interviews, it was suggested that $148,000 per year would be saved under a guaranteed title arrangement, and $184,000 per year were boundaries guaranteed as well. This was the first and most comprehensive attempt to determine costs and attendant benefits.

Planning A Pilot[31]

4.02 Another aspect of preparation for land titles was the design of a pilot project. A pilot would afford an opportunity to:

a. test public reaction to the new system;

b. assess staff requirements;

c. examine options for information storage, such as computers and microfiche; and

d. test various things about the system.

There would be,also, the incidental benefit of assembling a group of individuals with specialized skills and experience.

4.03 Two general options were open:

a. operate a simulated land titles system; or

b. proclaim the Land Titles Act in a restricted geographic area, and operate the system accordingly.

In the event, option b. was chosen. The outline of the two versions of the simulated system is attached as Annex "C".[32]

A Live System

4.04 In opting for a live system, the Land Titles Act would be proclaimed in a county, a registration district, or a municipal unit.

4.05 The degree of involvement of the public in the operation of the system and the rate of properties being brought into the system could be controlled by three factors:

a. Size of area. The proclamation could be with respect to as small or as large an area as is desired. Additional areas might be, from time to time, included or excluded;

b. Types of properties. The proclamation could specify what types of properties are required to enter the system on transfer. Classifications might be established by size, value, land use, or specific location, and these might be altered from time to time as circumstances dictate; and

c. Exemption of specific parcels. Some exemptions are automatic under the Act. Other exemptions are provided for in the regulations and may be exercised at the discretion of the Registrar General. Properties conveyed for no value (such as transfers within a family) are not required to be brought under land titles.

4.06 It was proposed initially that the pilot operate for a 12-month period. There were two major factors here, unrelated to the system itself: the period would have to cover the busiest part of the registry cycle, and a full fiscal year was wanted in order to evaluate costs. During the first two months it would apply only to lands voluntarily brought under the system. During the next 10 months, all conveyances of real property (not otherwise exempted) would trigger applications to have the property brought under the system.

Location

4.07 For the pilot to operate realistically the district it embraced would have to be one in which the initial round of property mapping had been completed. In 1980 assessments were made of such areas in Nova Scotia and New Brunswick.

a. Nova Scotia. The results of this assessment are tabulated by district and by factor at Annex "D". Had a pilot project been put in place in Nova Scotia, one of the counties of Pictou, Colchester or Hants would probably have been chosen.

b. New Brunswick. The results by district and by factors is attached as Annex "E".

4.08 Up to the summer of 1980 a pilot project was a possibility in Nova Scotia or New Brunswick. By the autumn of that year it was apparent that if the project were to be operated, it would be in New Brunswick.

Cost

4.09 The cost of a 12-month pilot project was estimated in 1980 as follows:

Space 1500 sq. ft.	$ 15,000
Registrar General R.G. and two clerks	70,000
Legal staff Lawyer and two clerks	58,000
Equipment rental Terminals, printers	20,000
Other Telephone, travel furniture, stationery, etc.	15,000
TOTAL	$178,000

Features to be Tested

4.10 The pilot would test the following:

a. the adequacy of the legislation;

b. the regulations;

c. the procedural manuals;

d. the proposed systems for use in the land titles office;

e. the manner in which businesses and professions were able to adapt themselves to the use of the system;

f. the manner in which the system was able to serve the public;

g. the various means by which data could be received, stored, and transmitted within the system; and

h. the best manner in which different kinds of properties might be moved from the old system to the new.

Dismantling

4.11 Prior to the termination of the pilot, it would have to be decided whether the land titles system would continue to operate in the area. Should a decision be made not to continue the system (and because the pilot would be "live") there would have to be an effective and, ideally, inexpensive method of transferring the title to land brought under the Land Titles Act back to the Registry of Deeds system.

4.12 The following options were deemed practicable:[33]

a. Cease receiving applications and maintain the properties already accepted into the system for subsequent transfers only. This option would involve the continuing cost of the legal support necessary to facilitate the subsequent transfers;

b. Enact a declaratory statute to define the effect of the land title certificate of registered ownership, with legal interests thereafter to be dealt with under the Registry Act. For such properties this procedure might produce a blanket certificate of title the like of which one might acquire through an action under the Quieting of Titles Act. This option would likely attract compensation claims on the basis that something had been assured which was now taken away;

c. Legislation could be passed authorizing a document declaratory of title to be registered under the Registry Act. This would have fairly high administrative costs and might

attract compensation claims; and

d. Legislation could be passed to the effect that documents under land titles could be registered with equivalent effect under the Registry Act. This option would incur registry fees and would have the effect of divesting some people of the indefeasible title they would have acquired under land titles. This would attract compensation claims.

N.B. Land Titles Act

4.13 The draft act was the result of seven year's research by LRIS in cooperation with the Legislative Counsel of the Province and numerous meetings with representatives of the N.B. bar and Department of Justice.

4.14 A conscious effort was made not to alter existing real property law, but to develop a land transfer and land registration system incorporating a number of principles recognized in legal systems around the world as essential to the operation of an efficient system.[34]

4.15 The general principles embraced the curtain, mirror and assurance concepts. These are enlarged upon in para. 2.18 above. In essence, the effect of transactions is guaranteed. A change in ownership is effective once the appropriate entry is made by the registrar on the record. An incorrect entry may be rectified unless an innocent purchaser has in the meantime relied upon it as being correct.

4.16 To these were added:

a. Filing by Parcel. Instruments registered must refer by a unique parcel index number to the land affected. The document is then filed under that number which has been assigned to the property concerned. An alphabetical name index is maintained also for the purpose of determining individual interests in land;

b. Court Supervision. All transactions are subject to ultimate adjudication by the courts. If a mistake has been made and it can be corrected by rectifying the records maintained in the system, the courts have the power to order the correction made. A person who is not satisfied with the act of a registrar may appeal;

c. Judgements. Under the registry system judgements are registered and bind the lands of the judgement debtor named therein. This can sometimes cause inconvenience to persons who have names similar or identical to those of the judgement debtors. Judgements filed against specific parcels will eliminate this problem;

d. Debentures. These are contracts acknowledging a debt. They are treated in much the same way as a mortgage. They must be registered against a specific parcel of land. This was a major change about which there was a great deal of discussion. Outside the land titles system debentures create a charge against certain categories of real property owned by a corporation.

e. Standard Clauses. Standard clauses have been developed for documents which give effect to the great majority of transactions. Those which refer to mortgages have been circulated to mortgage lending associations for their comments. (Lending institutions can file copies of their own own standard forms once these have been approved for use in land titles transactions. Some institutions have done this and continue to use clauses in forms which have been developed by them.) While standardized clauses are likely to be accepted for most purposes, unusual circumstances will require modification of these forms. A mechanism exists whereby changes can be made;

f. Caveats. The caveat is a device used to protect an unregistered interest in land. It is a notice that the person who uses it claims an interest in the property which otherwise cannot be protected, e.g. an agreement of purchase or sale or a timber lease. The caveat does not create an interest in the property, but all subsequent instruments which deal with that land are subject to it. A right of action is open to one who has been injured by the frivolous use of a caveat;[35] and

g. Prohibition of possessory interests. Acquisition of title by adverse possession is precluded. If a person occupies or uses land belonging to another for the time set out in the Limitation of Actions Act (20 years in New Brunswick), and in the manner sanctioned by the common law, that person obtains title to the property. Once land has been registered under the Land Titles Act, no person may acquire title in this fashion.[36][37], though there are exceptions for certain interests.

Special Features[38]

4.17 There are features of the N.B. Land Titles Act (and of the N.S. Act, which has yet to be proclaimed) which are not always found to the same extent in other systems:

a. Intake is triggered by conveyance of property under the old system. A deed of land may not, by regulation, be registered in the registry of deeds without the approval of the Registrar General who will grant this if an application is made to bring the land under the Land Titles Act, or special circumstances exist;

b. Records can be electronic. The format for documents has been designed to accomodate electronic storage, but paper copy retention is also possible;

c. General register has been abolished. All instruments, including executions and judgements, must be filed against specific parcels. This arrangement has aroused considerable interest elsewhere;

d. Registration is retroactive to the time of acceptance. Documents are stamped with date and time as they are paid for. If subsequently they are found to be in good order, they obtain priority from the time they were handed in;

e. Caveats are assignable. A claim supported by a caveat may be assigned like any other encumbrance. It does not require discharge and refiling. Thus there are no problems with priorities. British Columbia and Manitoba have recently adopted this arrangement;

f. The certificate shows the entire title. The Certificate of Registered Ownership shows on the face of it the names of the present owners of the property and lists all encumbrances against title in sufficient detail that original documents need not be consulted. A sample of a certificate is attached as Annex "F";

g. Mortgages are in short form and contain lengthy covenants by implication. Parties may delete statutory covenants and insert optional covenants by use of assigned numbers. In this way documents can be reduced to one page and those which depart from the standard can be immediately identified;

h. Debentures are in short form. A standard form of debenture consisting of one page with numbered covenants was developed. These can be modified in a similar fashion to mortgages;

i. Lots on plans. When an approved plan is filed new certificates of registered ownership are issued to the owner with respect to each parcel shown;

j. Miscellaneous documents. When a document comes in that does not conform to the standard format the Registrar General may grant an order giving it effect as if it were a transfer, easement or whatever legal interest is intended;

k. Trusts are recognized. A trust may be created by granting a conveyance "in trust". The Registrar General must be satisfied as to the appropriateness of a subsequent conveyance by the trustee before it can be registered;

l. Speedy indemnity. A party with a valid claim for compensation can apply to the Registrar General who may then consent to an order for payment. In a situation where two innocent parties claim the same land the party presently in possession is awarded the land and the party without possession may receive compensation; and

m. Limitation period. An action of indemnity must be brought within two years after an applicant becomes aware of his loss.

New Features

4.18 Two completely new features are included above:

a. The assignment of priority to registered documents according to the time and date of their receipt; and

b. The capacity to assign a caveat.

4.19 Under most land titles systems a transaction is not effective until the registrar alters the record to give effect to it. This was identified as a defect in the system. The Act makes a document effective as between the parties to it once it is signed. It further provides that registration of the document is given effect as of the time the document is tendered for registration although the alteration of the record may not occur until later. The key to this arrangement is the assignment of a unique serial number to each document presented to the land titles office. If later the document is not accepted, the serial number does not confer any priority.

4.20 The caveat is a notice of an unregistered interest in land. The older acts require the filing of a new caveat when the interest changes hands.

Minerals

4.21 While minerals are physically part of the soil, they are not land or real estate in the legal sense. When one acquires rights or title to land one is not getting thereby any right or title to the minerals in that land. But in illustration of the rule that to every rule there is an exception, one can find instances where, indeed, minerals have been granted as part and parcel of Crown grants. Whenever this was done, the practice never lasted very long, nor was it done on a large scale. Moreover, in most cases such provisions were later revoked by government anyway. Of course the "royal minerals", gold and silver, were granted only in most uncommon circumstances -- if ever at all.

4.22 The N.B. Land Titles Act does not apply to minerals.[39] Those rights to base minerals (which rights currently exist in parts of the Province) and those which may be acquired in future, are registered under the Registry Act. This separation of land and mineral rights is found in other land title systems too. In the western provinces, for example, rights to land are registered on white forms while those to minerals are done on blue. A celebrated Canadian case hinged upon the ownership of mineral rights within a parcel.[40] Among other things it established the principle that a registrar of title could not correct an error to the prejudice of a person who had relied upon the validity of the register.

Regulations

4.23 Very brief notes on the regulations under the Act and a list of the forms required by it are at Annex "G".

4.24 A summary of the Act is at Annex "H".

Ancillary Legislation

4.25 As noted previously, a conscious effort was made in drafting land titles not to alter existing legislation. It turned out that no ancillary legislation had to be adopted. The Standard Forms of Conveyance Act is not considered ancillary legislation because it addresses matters beyond land titles.

Standard Forms of
Conveyances Act[41]

4.26 The present Act had its beginnings in bilingualism. Work in furtherance of land titles only confirmed the need for change.[42] The farther legal research went and the more the existing state of things was investigated in support of land titles in New Brunswick, the clearer it became that this area of the law needed very serious attention. Conveyancing is the means being used throughout the province for the transfer of interests and rights in land. There were, fundamentally, two problems:

a. A variety of forms and phrases were being used in different regions. As a result there was considerable doubt in some instances whether these forms or phrases would be found valid if put to serious challenge;[43] and

b. Words and phrases of explicit and highly technical meanings, within the context of the common law, were being translated in a variety of ways when instruments were being written in the French language.[44]

4.27 As a result a considerable amount of time and effort had to be made to standardize the forms and language employed in the transfer of interests in land. The Director of Land Titles and Legal Services for LRIS believes the Land Titles Act could have been in place a year earlier had not this very necessary diversion occurred. The consequence was the Standard Forms of Conveyances Act, assented to on July 16th, 1980, which was intended to

> standardize the form and content of conveyances of land, to simplify the English language version of common law legal terms and provide French language equivalents for these terms, and to provide shortened equivalents in both official languages for traditional long form legal clauses.[45]

4.28 The Act thus equated French words and phrases to the precise English words and phrases of common law usage. In both languages it also shortened lengthy statements which had become accepted practice over many years. Equivalent statements about rent are an example of what was accomplished by way of condensation:[46]

The lessee shall pay rent.	The lessee covenants with the lessor that the lessee shall for the duration of this lease pay to the lessor the rent hereby reserved on the days and in the manner herein set out without any deduction whatsoever.

N.B. Registry System

4.29 A few comments and statistics about the operations of the registry system in New Brunswick will give some indication of the current situation. The system was set up in 1784, and has remained unchanged in its essentials since that date. It exists to:

a. give public notice of interests which are claimed in land;

b. establish priorities between claimants; and

c. provide an orderly method of recording, indexing, and locating documents.

4.30 Perhaps the major change in the system in the two hundred years it has been operating relates to the additional duties for which it is now responsible. The Registry System in recent years has been the means of maintaining "documents relating to sale and mortgaging of chattels, assignment of book debts, memorials of judgement and mechanics' liens, as well as collecting provincial tax upon transfer of property."[47] The location of the registry offices within the province, and the total of real property transactions in each district are shown at Annex "I".

4.31 Over the years there have been a variety of improvements within the system. The system, however, has followed technology rather than led it. The fountain pen replaced the quill pen, and in turn gave way to the typewriter. Recently photocopiers have appeared and automated approaches are being explored.[48] Whatever the case, the system is one which was never designed to handle the volume of transactions currently imposed upon it. At Annex "J" are shown the numbers of documents relating to land transactions in the system since 1900, and the number of registry office staff since 1950. The situation in Albert County is reflected separately from 1982 onwards in Annex "K".[49]

Public Relations

4.32 Preparing for land titles involved far more than legal research and legislative drafting. Certain business and professional bodies had a very direct interest in real estate transactions. These organizations would be greatly affected by new legislation. Indeed, the feasibility of new legislation would depend in great measure upon how land titles was received within the legal profession, among real estate firms, by land surveyors, and by mortgage lending institutions. There was also the matter of how a new system would be regarded by the public. Hence there was a need to introduce change in a positive way by eliminating, through effective advance planning, the chance of damage, discomfort, or failure.

4.33 Land titles would not be a success if the legal profession were not prepared to either welcome it (at very best) or give it a fair trial (at very least). A considerable amount of time and effort was required of LRIS land titles staff to make solicitors and others aware of what was involved by way of the title system in general, and the pilot project in particular.

4.34 A partial listing of the organizations contacted both initially and in continuing discussions and seminars is attached as Annex "L".

4.35 In November 1983 officials from the Department of Justice and from LRIS met at Riverview with councillors, members of the Legislative Assembly, and residents of Albert County. Later on a bilingual information folder about land titles was sent out to every household in the County. In June 1984 a public meeting was held, again in Riverview, for all interested citizens.[50]

LRIS Re-Alignment

4.36 While work on land titles, survey control, and mapping was in hand, the future of the Land Registration and Information Service was not at all clear.

4.37 A five-year agreement between Canada and CMP was the basis for LRIS operations generally, and land titles work in particular. See Annex "A" for details. The agreement ran from 1 Apr 73 to 31 Mar 78. It was pretty clear by the spring of 1978 that another five-year agreement was rather unlikely. In September 1978 the Government of Canada gave notice that there would be no financial support after 31 Mar 79.[51] This was part of a program of budget cuts designed to reduce the federal deficit spending.

4.38 The day of the so-called 25-cent dollar was over. Support for LRIS activities would henceforth have to come from the provinces in the form of 100-cent dollars. The period of uncertainty, from at least early 1978 to the winter of 1979-80, was resolved by the signing of an agreement between CMP and the three provincial governments. This arrangement "gave a renewed but less ambitious mandate to LRIS."[52]

4.39 The LRIS Board of Directors was reconstituted to provide for membership drawn from each province (3 members each) and from CMP (at least 3 members). Phase III remained, but it was to provide "assistance in the implementation of an improved system of land registration." It was thus open to each province, as indeed it always had been in reality, to pursue its own goals. Annex "M" contains some of the details of the agreement.

Last-Minute Changes[53]

4.40 The objectives of any pilot project include the discovery of unexpected hitches within the system being tested. Some operational problems developed with the Albert County pilot because last minute changes were made in the system itself without compensating changes in the pilot -- at least initially.

4.41 During the process of drafting legislation, policy issues arose from time to time which required response from government. Some policy questions were deferred until regulations were being drafted. In turn, the regulations came into place only shortly before the pilot opened. The effect was to postpone several decisions critical to the operation of the pilot until the eve of its commencement. Last minute changes were of two kinds:

a. changes in the Act and in the Regulations from the draft and its concepts; and

b. changes in the administrative procedures which had been previously worked out, and upon which both workloads and budget had been predicated.

Responsibility for
Title Search

4.42 The draft had required the solicitor acting for the applicant to be responsible for the correctness of the abstract of title. A late change absolved the solicitor from this liability. The responsibility for assuring accuracy of the search was thus shifted to the legal staff of the pilot. The consequence was that initially the pilot received some abstracts that were of dubious quality, each of which had to be carefully checked. This led to increased processing time since many of the titles had to be searched again by the pilot legal staff. A practice memorandum on standards for conveyancing, issued by the N.B. Law Society about the time the pilot began, helped things a good deal. There still remain some problems owing to the fact that the registrar has no mechanism to enforce standards. Much of the difficulty was resolved by mid-1986 through the education of the few private solicitors involved. As long as compliance with standards remains voluntary there will be some who refuse to conform.

Format of Abstract

4.43 The draft Act had required a standardized format for abstracts of title which were to accompany applications. The requirement for a standardized form was dropped. Thus during the initial months abstracts were prepared in various different formats, and some were lacking any sense of organization. Information on easements affecting the title was imprecise or totally lacking in some cases. This required legal staff to allot greater time per abstract and often information had to be sought out with respect to easements suspected to affect the property. The response within the pilot was to develop standard search report forms. Many of the searchers are now making use of these forms on a voluntary basis and this has speeded up the checking of abstracts.

Accept All
Applications

4.44 The original proposals were predicated upon the proposition that the staff would only attempt to process those applications for registration that they were able conveniently to handle. The Act contains a mechanism which could be used to stem the flow of applications automatically received, were they to become too numerous for staff to handle efficiently. This would leave the properties under the Registry System until the next time they turned over, or until a voluntary application was submitted.

4.45 The decision was made, however, to accept all applications. The rationale, quite simply, was that this approach should be taken, so that everyone would have the same opportunities without selective interference in the process. Otherwise the pilot might not be seen as a real test of the new system's capacity to respond to public perceptions and needs.[54]

4.46 One consequence was that the system was overloaded to some extent, and a backlog partially created. On the other hand, the fact that almost one-seventh of the properties in Albert County were brought into the system during the first two years of pilot operations can be credited to this policy.

Reduction in Legal Staff

4.47 Legal staff was cut from two solicitors to one. Given the other decisions referred to, one solicitor was not adequate. Time which should have been devoted to planning and improving the system had to be given over to checking abstracts. LRIS provided assistance and backup in the persons of the Director of Land Titles and Legal Services and Rosalind Penfound. The problem was resolved in July 1986 by the employment of a second solicitor.

Timing

4.48 The project began at the busiest time of the year as far as registry offices are concerned. Larger than usual numbers of transactions have to be handled in the summer months. Summer vacations tend to exacerbate the situation. Earlier plans had been based upon the pilot beginning in January.

4.49 In any event, January 1984 was not the ideal time to begin the pilot. There were a number of things that had to be done which called for postponement. The provincial legislature meets only in the spring of the year, for example, and legislative approval was needed to give effect to procedures earlier agreed upon. (The responsibility for abstracts was one such.) The earliest this could be done was the spring of 1984. Had the pilot not commenced in July, it probably would not have got under way until the following January. The awkwardness of beginning at the busiest time of the registry year had to be weighed against the possible loss of momentum in waiting till later.[55] The ability of the pilot to survive the busiest time of the year, and at the beginning of things, was also a test of its capacity.

New Brunswick

5.01 New Brunswick was successively a part of France's Acadia and of Britain's Nova Scotia during the imperial struggles of the 17th and 18th centuries. Most of its French population was deported after 1755. Those who returned in 1763 after the wars had finally ended, finding their lands taken up by immigrants from New England, settled in the then vacant northern and eastern shores -- along the Bay of Chaleur and the Northumberland Strait. Twenty years later after the American Revolution some 14,000 Loyalist refugees arrived and took up lands along the St. John and St. Croix river valleys. The sudden increase in population combined with the distance from the seat of government in Halifax led to New Brunswick being established as a separate colony in 1784.

5.02 During the first half of the 19th century there were large immigrations of Scots and Irish. By 1856 the 15 counties were constitued in their present form with one authority suggesting that the county lines "follow a definite system, namely, the natural grouping of the rivers."[56] Each had its own local government, including a registry of deeds, within a system modelled upon the Nova Scotia Registry Act of 1753.

5.03 In 1867 the province joined with other British colonies to become "one Dominion under the name of Canada" -- a federal state with a parliamentary system adapted from that of Great Britain. Jursdiction over matters of national interest -- banking, defence, postal services, for example -- was vested in the central government. The provinces control such things as local works, contracts, education and real property. Matters not specifically assigned to the provinces were reserved to the federal government.

5.04 In 1963 the long-standing relationship between the provincial government and its municipalities (both counties and cities) was radically altered. The province assumed complete responsibility for service to people; that is the province provides for education, medical, judicial and social services. The municipalities handle services to property -- water, sewer and fire protection. Taxes on real property are assessed province-wide on actual market value, and are collected by the provincial government.[57]

Albert County

5.05 The county has an area of 710 sq. miles or 1,340 sq.kilometers, and a population of 23,632 or 2.1% of the province's population according to the 1981 census. The county contains one town, Riverview, at 14,907 and three villages: Hillsborough (1,239), Riverside-Albert (478) and Alma (329). The primary industries relate to lumbering, woodworking, forest products, and agriculture. Oil and natural gas have been continuously produced within the county since 1912. Fundy National Park embraces a large portion of the western and southern part of Albert County.

5.06 The registry office for Albert County is located in Moncton, within the adjoining County of Westmorland. It has been so placed since 1972 when it was moved there from Hopewell Cape, 20 miles away. The change was made better to serve the residents as a whole. The bulk of the land registrations were in Riverview, just across the Peticodiac River from Moncton, and most solicitors who had to search title were practising in Moncton. At the same time, the Westmorland County Registry Office was moved to Moncton from Dorchester -- again about 20 miles from the city but on the opposite side of the Peticodiac River from Hopewell Cape.

5.07 There were 14,192 land parcels in Albert County as of 30 Sep 1986.

Pilot Summary

5.08 The land titles pilot project operated in Albert County from July 1984 until the end of March 1987. Initial plans had called for a 12-month pilot; in the event it ran for 33 months. This length of time was needed to deal with practical problems that arose during the pilot period. All of these were resolved without great difficulty with two exceptions: parcel definition and condominiums, of which more will be said later. With certain exceptions, transfer of title to a property within the County triggered its removal from the registry system to the land titles system. No registration fees were charged by the land titles office for first applications during the pilot; property owners got a bit of a bargain. The applicant, of course, had to bear the cost of the title search on first application. But this would have been a cost under the old system -- at least for a prudent purchaser. At the end of the pilot, on 31 March 1987, the land titles system continued in place in Albert County as a regular feature of government in New Brunswick.

5.09 During the time the pilot had operated 2,348 parcels were brought into the new system, or about 17% of the parcels in Albert County. There were no claims against the assurance fund.

Aims

5.10 The broad aims of the pilot program were to test the adequacy of the land titles system, gauge its capacity to serve the general public, and see how the system was received by its users. More specifically, the pilot would assess:

a. the adequacy of the legislation, the regulations which support it, and the procedure manuals which had been developed to give effect to them;

b. the adequacy of the systems proposed for the internal governance of the land titles office;

c. the way in which businesses and professions were able to adapt to the use of the system;

d. the way in which the system was able to serve the public;

e. the various means by which data could be received, stored, transferred, and transmitted within the system; and

f. the best ways in which different kinds of properties (ordinary properties, subdivisions, or condominiums) might be moved from the registry system to the land titles system.

5.11 The pilot project would also serve purposes beyond an immediate assessment of the internal consistency, efficiency, and public reception of the land titles system. It would provide the beginnings of a working model which could lead in the integration of the functions of registry offices, the assessment office and the LRIS regional office within any given district.

Organization

5.12 The pilot project was operated for the Province of New Brunswick by LRIS.

5.13 The monies necessary to support the project came from the three Maritime Provinces through the LRIS budget. While the pilot was obviously of primary concern to New Brunswick, the LRIS Board believed the outcome would be of interest and eventual benefit to both Nova Scotia and Prince Edward Island. The costs were apportioned on the basis of population, that is to say: N.B. 41.8%, N.S. 50.9%, and P.E.I. 7.3%, or thereabouts.[58]

5.14 The pilot depended for direction or support upon the following agencies of government:

a. Department of Justice, New Brunswick;

b. Land Titles and Legal Services Division, LRIS; and

c. LRIS Regional Office, Moncton

5.15 It was the intention that the user of the registration process and of its resulting records, deal with one office -- the office which kept track of the ownership of interests in land. In its broadest sense the pilot thus embodied not only those whose responsibility was to land titles, but those who maintained the registry system for the County.

Department of Justice

5.16 The Department of Justice controls and directs the operation of the registry system within New Brunswick. The system is under the supervision of the Chief Registrar of Deeds who reports to the Assistant Deputy Minister, Justice Services. The initiative for the pilot came from that department, and the ultimate responsibility for its operation rested there.

Steering Committee

5.17 A steering committee was established to monitor the operation of the project from start to finish. The aims of the committee were to identify:

a. Possible legislative amendments;

b. Operational problems; and

c. Future directions.

Initially the committee met on a monthly basis; later, a less frequent schedule was required. The committee operated under the chairmanship of R.L. Scammell, Assistant Deputy Minister, Department of Justice, Province of New Brunswick.

5.18 The composition of the committee is given at Annex "N". The committee was made up of individuals from four general areas: officials of the Department of Justice, members of LRIS, staff from the registry offices in Moncton, and members of the user community -- barristers and real estate agents. The inclusion of users of the system was of considerable importance. Such individuals not only contribute to the resolution of problems and procedures, they report facts back to their parent organizations and thus damp the inevitable rumours associated with any new development.

Pilot Staff

5.19 For the first two years of its operation the staff of the pilot project was drawn wholly from existing resources within the government of New Brunswick and from within LRIS. The positions and individuals, initially and later on, were:

Registrar General:	Robert J. Fleming Chief Registrar of Deeds
Deputy Registrar General:	Therese LeBlanc Registrar of Deeds Westmorland County
Registrar:	Donna V. Tower Registrar of Deeds Albert County
Legal Advisor to Registrar General:	Mary A. Kimball Solicitor, LRIS
Solicitor:	Margaret Shannon (from Jul 86)
Clerical and Research:	Marie E. Belliveau Janice Boudreau (from Mar 86)

5.20 In October 1986 Ms. Kimball was appointed Deputy Registrar General in place of Ms. LeBlanc. It might be noted that during the period July, August and well into September 1984, Ms. Kimball was the whole of the land titles staff and the person who had to do all the land titles work.

Legislative Amendments

5.21 Amendments to the Act, other than those of a housekeeping nature, were made in each of the years 1983, 1984 and 1986.[59] The substance of these is listed at Annex "O".

Operational Problems

5.22 The principal operational problems involved:

a. Parcel definition and indexing;

b. The backlog;

c. Condominiums;

d. Leases;

e. Legal Incidents Affecting Title;

f. Staff training; and

g. Response to public enquiries;

Of these, responding to public enquiries was by far the most time-consuming, and much more than anyone had anticipated. Each topic is addressed separately below.

Regional Office LRIS

5.23 LRIS operates Regional Offices for the Provinces of New Brunswick and Nova Scotia at Saint John, Moncton, Bathurst, Edmunston and Fredericton in the former, and Halifax, Sydney and New Glasgow in the latter. P.E.I. operates a centre at Charlottetown.

5.24 The centres provide service to government departments, to local businesses, and to the general public. They are responsible for the physical maintenance of the survey control system, the initial creation and later maintenance of property maps and parcel information files. They also sell LRIS products such as survey coordinate listings and property maps.

5.25 An essential condition in determining where the pilot project would be held was that property mapping be completed within the district to which the land titles system would apply. The connection between the Moncton Regional Office and the pilot was the property mapping for Albert County.

5.26 The pilot had the full cooperation and support of Mr. Gerald Lavoie, Manager, Moncton Regional Office, LRIS. The Land Titles office and the Registry of Deeds office for Albert County operated together; registry books and the land titles files on individual parcels were located in the same room. The Regional Office LRIS was four floors above.

Land Titles Office

5.27 There is a significant difference between the kind of work required in handling documentation within a land titles system as compared with a registry system. In the former more checking and verification is needed than in the latter; also, a variety of notices, certificates and orders are produced within the land titles office which do not exist in the registry office.

5.28 The notices, certificates and orders, for the most part, relate to property already within the land titles system. The pilot had to deal with these, of course, but major concerns were not with this activity, but with properties coming into the system for the first time. Such properties require a parcel index number (PID) and an abstract of title in order to become eligible for consideration.

5.29 Broadly speaking, properties leave the registry system, become part of the titles system, and are dealt with through:

a. Assignment of a parcel index number (PID);[60]

b. Preparation of an abstract of title;

c. Verification of the abstract;

d. Acceptance by the registrar general, whereupon the record shows the title and applicable encumbrances;

e. Subsequent changes to the record being made as transfers occur; and

f. Notices, certificates, and orders being issued as circumstances require.

A pictorial representation of the registration process is shown at Annex "P".

Parcel Indexing

5.30 The Registrar of Land Titles relies upon the PID assigned by the property mapper in the normal course of work, to provide a unique identifier for each parcel of land being brought into the system. In some instances the PID has been assigned to the parcel for a considerable period of time. But where parcels have just been created, a PID must be assigned expeditiously in order that registration can proceed without delay.

5.31 The assignment of the PID is one of the functions of the Regional Office which employs the property mapper. Since the Albert County Land Titles Office, and the Moncton Regional Office LRIS were in the same building, access to a property mapper who could assign a PID was not a problem. This service was usually performed by the property mapper who was responsible for parcels in Albert County. Since the PID is an essential part of the application procedure, there must be a means for information to flow on a regular basis from the Regional Office to the Land Titles Office and **vice versa**. The registrar of land titles relies upon the property mapper not only to identify each parcel but to verify a PID given in any application.

5.32 Property mappers use property maps, microfilms of registry books, LRIS parcel index files, grant maps, and survey plans to identify land parcels. In most cases this can be done the same day but occasionally more time is required to make field inspections or do more research. Where mechanics liens are involved, for example, solicitors need quick parcel identification so registration is not delayed. Were registry offices located some distance from a regional office (the property mapper's workplace), mail service might not be an acceptable solution.

5.33 A few solicitors refused to approach the Regional Office on behalf of their clients in order to secure a PID for a property. This potential impasse was usually resolved by land titles staff themselves getting the required identifier.

Parcel Identification

5.34 The pilot project tested not only the land titles system but at least one other system as well -- that of parcel identification.

5.35 A parcel is a contiguous area of land that is described in a single description in a deed, or as one of a number of lots on a registered plan of subdivision or amalgamation where applicable, separately owned, either publicly or privately, and capable of being separately conveyed. Any portion of a property capable of being separately conveyed is recognized as a parcel.[61]

5.36 Specific refinements must be developed in support of this definition in order to provide for the assignment of PIDs to national parks, historic sites, local commons, expropriations, railways, highways, a variety of provincial lands, and so on. The topic is a complex one which cannot be addressed here in other than very simplistic terms. Besides, an exhaustive examination of things would not provide a step-by-step routine fully applicable to another jurisdiction.

5.37 Land titles, through its use of the PID as the fundamental identifier of a parcel, drew attention to parcel definition by reason of:

a. The difference between the registry and the land titles system as they relate to PIDs;

b. The fact that parcel definition within some public lands had been ignored;

c. Condominiums; and

d. Leases.

Land Titles and
Parcel Definition

5.38 Under the registry system changes in PIDs can be made in successive editions of property maps without undue inconvenience to anyone. PIDs can be retired, for example, and new ones issued as a result of subdivision or expropriation. The sole proviso is that there be an audit trail so one can determine the PID of a parcel at any given time.[62] When land is under land titles, the situation is quite different. In a land titles district there must be a strict integrity of PIDs because the PID is the controlling number that is used to index and reference a specific parcel with configuation as of the date the property was first registered. Changes in PIDs, in a land titles district, should only be made with the consent of the registrar.

Public Lands

5.39 The advent of land titles meant that some difficulties relating to public lands could no longer be ignored as they had been in the past. Notable in this category were lands which were, or which were used as, public highways. Broadly speaking, so long as the title to a highway or a section of it was not an issue, the parcel could be left alone as far as parcel definition was concerned; if particular problems arose when slivers were expropriated here and there, or in examining ownership of a specific section, such could be dealt with as individual situations. Until the pilot project, existing highway lands were not normally subject to parcel definition.

5.40 Highways in New Brunswick may be owned by the province in fee simple, or they may be owned by municipalities. Moreover in some instances the adjoining owners hold title to the land itself while the general public has only an easement for the purpose of travelling. Once a land titles district is created, the title of any parcel and the encumbrances upon it become a central issue. Since government must assure the title, the state of the title must be known without any uncertainty. Consequently parcel definition must be carried out to identify sections or slivers according to their ownership and the extent of that ownership. In practice this means procedures acceptable to the owner, the property mapper, the Department of Transportation (in the case of roads), the surveyor, and the registrar of land titles, must be developed and made known to all concerned. An effective procedure was developed for parcel definition for highway expropriations. This provided also for action to be taken in the event of subsequent abandonment.[63]

Abstracts

5.41 When a parcel is brought into the land titles system, its title is searched in the Registry of Deeds one last time. The title search results in a chronological statement of the instruments and events under which a person is entitled to the property, showing all encumbrances to which the property is subject. This abstract is part of a first application and it is subjected to a careful examination in the land titles office. The solicitor who furnished the abstract had no responsibility for the correctness of it. This responsibility fell to the legal staff of the title office. An encumbrance upon the title discovered after registration could lead to a claim against the system.

5.42 The requirement that abstracts be done in a standardized format was dropped shortly before the pilot began. This "meant that a number of different formats, some of them random in nature, were used and caused considerable difficulty to land titles staff checking them."[64] A standardized form for reporting search information was developed and distributed to searchers, as was a summary reporting form. To the extent these are used they have addressed the problem. Though there is no mechanism to force a standard format, many searchers are using the form voluntarily.

5.43 While the format in which the abstracts are prepared was greatly improved by the use of a standard reporting form, the quality of some of the abstracts remains a problem. There are still solicitors who do not provide sufficient detail or base their abstracts upon incorrect references. The Registrar General should be provided with regulations which allow the imposition of guidelines and the authority to enforce them.[65]

5.44 The abstracts are not available to the general public. They represent work of an individual searcher who may not wish to share it with others. Any abstract is merely a lawyer's opinion. The province would be liable for the accuracy of the abstract were some person to rely upon it and suffer loss. Moreover, the person who certified the search could be sued in such circumstances. The foregoing does not, however, leave the public without some advantage from the searches. On approval of a comprehensive search of a subdivision, a list is made of all PIDs relating to the subdivision. Anyone subsequently searching in order to bring land in the subdivision into land titles need not go back of the date of the subdivision plan in preparing an abstract for filing with the first application.[66]

Backlog

5.45 The most critical problem associated with the pilot was the backlog of initial applications which developed. The reasons for the backlog were:

a. The decision to accept all applications rather than take as many as could be handled by the pilot staff;

b. A reduction in staff from the level earlier planned;

c. Assignment of the responsibility for the correctness of the abstracts to the legal advisor for the pilot;

d. Dropping the requirement that abstracts be in a standardized format; and

e. Lack of a computerized data base for storing, sorting, and retrieving information.

5.46 The backlog quickly built up. It was dealt with through the legal advisor working extremely long hours, and the attendance of the Director, LT&LSD from Halifax to assist in the verification of title abstracts.

5.47 By February 1985 a backlog of 200 applications had been reduced to four. By October the backlog had grown again to 182; by early April this had been whittled back to 158. The backlog represented applications which had been received up to two months previously but which had not been dealt with. They were not necessarily problem files though there might very well turn out to be problems with some of them.[67]

5.48 Allowing for problems with some applications, and normal interruptions, the average for processing applications with the pilot staff regularly on hand during 1984 and 1985 was about seven a day. During the low volume period in March only two or three applications came in each day; in June this could jump to 15 or more per day.[68]

Condominiums

5.49 Though applications were received from individuals to bring their condominium holdings under land titles, no certificate of registration for any condominium was issued during the pilot. The reason was not that there is anything wrong with condominiums, simply that they are not the same as other interests in land, and no decision had been made as to what rules should be made applicable to them. Land titles can accept condominiums once the ground rules for their acceptance have been determined.

5.50 A condominium is an arrangement which embraces two kinds of ownership. The apartment or condominium unit is owned outright in fee simple. The common area is, however, owned in common with the other owners of apartments in the building. The owner of an apartment in a condominium with fifteen units, for example, owns an undivided 1/15th share of the common area.

5.51 The Condominium Property Act[69] provides that title cannot be split between the apartment unit and the common areas. (To permit this would create a situation analgous to owning a house lot with no access to it from the street.) The Land Titles Act, on the other hand, requires that the certificate for any parcel reflect the whole title; this is the mirror principle. Under the land title system joint tenants obtain one certificate (in two copies if they so desire) reflecting their joint ownership. They cannot each have a certificate showing their individual interests. Fundamentally condominiums must be wholly in land titles or wholly in the registry system. Part cannot be in the one system and part in the other.

5.52 There appear to be two basic approaches which can be taken as the basis of resolving this situation. One avenue is to say that an application from one condominium owner will trigger an application for all owners in that condominium and the whole complex will go into the land titles system. Another is to require that all existing and future condominiums, throughout the province, be brought under land titles. As it turned out, both arragements were introduced.

Leases

5.53 A lease is a conveyance of the exclusive use of a portion of land (which includes buildings) for a specific period. Most leases are for a short period of time. Leases do not involve any interest in land as far as title is concerned. Leases for less than three years do not require registration to be effective. On the other hand a lease for a long period is treated for most purposes as though it were an outright conveyance of the property. Indeed, long-term leases in some jurisdictions require approval in accordance with planning legislation. An exception is made where the lease is for a portion of a shopping centre or similar commercial enterprise where lessees share certain facilities in common.

5.54 An awkward situation, as yet unresolved, both with respect to land titles procedures and to property mapping procedures, arose from the long-term lease of a ten square foot gas bar in a shopping centre parking lot. A PID was assigned by the LRIS Regional Office to the gas bar separate from the PID assigned to the parcel of which it was a part. Since the PID is the key factor in bringing parels under land titles, bringing the shopping centre into land titles would not include the gas bar which has one of its own. Yet the gas bar, as a lease, cannot stand on its own.

Legal Incidents Affecting Title[70]

5.55 Examination of the recorded title of a property under the registry system or under the land titles system does not always reveal the full picture. There are a number of statutes and legal principles that give rise to encumbrances and restrictions on the use of land. Many of these do not depend upon registration to be effective, and some create a claim in priority to that of the registered owner.

5.56 The following is not an exhaustive list of all incidents:[71]

- Rights of Way
- Water Rights
- Railway Lands
- Crown Reserve Roads
- Private Roads
- Local Commons
- Squatters

Rights of Way

5.57 A right of way is a legal right to pass over the property of another. A private right of way is where the owner of a property has the right to pass over lands of another person to gain access to his property. At present such rights of way are not shown on LRIS property maps unless they are in the form of lanes or streets, giving access to several properties, and they are indistinguishable from streets or roads.

5.58 Another type of right of way is that obtained by a utility company, such as a power company. The power poles are placed across the lands of another and the company has the right to

go upon the right of way to maintain the transmission lines. Again, these rights of way are not generally shown on property maps.

5.59 Rights of way and enquiries as to whether they exist with respect to a particular property consumed a great deal of the time of the pilot staff in verifying property coming into the system. Private searchers, of course, have the same problems.

Water Rights

5.60 Water rights confer an interest in land covered by water. Most water rights are not shown on property maps.

5.61 Some water rights arise from provincial and federal grants of water lots in public harbours. Many of these have been identified in the mapping process and are delineated on property maps. Supporting documentation is often difficult to find, but by diligent effort it usually can be located.

5.61 Water rights in lakes and rivers are more difficult to establish. In New Brunswick, owners of property fronting on a river above the head of navigation have certain exclusive rights to use the water lot in front of their land to the middle of the stream.[72]

Railway Lands

5.63 Railways are governed generally by federal legislation. By and large railways are accurately mapped and assigned a PID. It is possible to have a valid lien against a portion of a railway filed under federal legislation[73] while not appearing in a registry of deeds. This could create a potential problem with respect to lands that at one time formed a railway road bed.

5.64 When a railway crosses a highway it is generally considered that the highway is the principal owner of the soil and that the railway crosses over it. In strict law, this may not be the case. Individual circumstances may reveal different priorities of legal interest.

Crown Reserves

5.65 Strips of ungranted Crown land were retained for the purpose of eventually serving as roads between blocks of lots. Many of these strips remain undeveloped, and are roads only on paper. Nevertheless, occupation of a road reserve does not confer title on a claimant. Ownership may only be gained pursuant to a Crown grant or a court order pursuant to legislation.

5.66 Certain lakes and rivers in New Brunswick are subject to Crown reservations along the banks and shores.[74]

Local Commons

5.67 A local common is an area of land to which a group of residents as a whole have rights, as opposed to private ownership. These are often lanes, playgrounds, and small parks established by a local developer.

Squatters

5.68 A squatter is a person who claims title to land of another by reason of long occupation to the exclusion of the true owner. After a certain period, and subject to certain conditions, the true owner no longer has the right to eject the squatter. The problem is to determine whether the length of time and the nature of the occupancy has been sufficient to confer title on the squatter. Generally, an occupancy of less than 20 years means the squatter can be evicted. One squatter, however, can take over from another and tack the previous time to his own if there has been no break in the occupation.

5.69 Under the Land Titles Act, acquisition of title by occupation is abolished. But before property is brought into the system an enquiry must be made to determine whether someone other than the applicant is in possession and under what terms. A title derived from a possessory claim prior to land coming under land titles can be documented and recognized just as any other title.

Staff Training

5.70 Prior to the commencement of the pilot none of the pilot staff other than the legal advisor to the Registrar General had received any training in the concepts and practice of the land title system. The result was that all training had to be given on the job, and tended to be given when it could no longer be postponed. It goes almost without saying that the most desireable situation is for conceptual training to be given in a systematic way, all the while reinforced by practical experience in the workplace under diminishing supervision.

5.71 Training on the job meant that the production of experienced people had to be sacrificed to initiate other staff to the land titles system and procedures. This contributed to the backlog which for a time reached serious proportions. Furthermore, staff trained wholly on the job tend to get things in bits and pieces without the opportunity to see how the whole affair fits together. When other districts are brought under land titles, some of the experienced staff from the pilot will be available for the prior indoctrination of other staff.[75]

Public Relations

5.72 Before the commencement of the pilot, presentations were made to various interested and affected groups and organizations. Some indication of the range of these groups is found at Annex "L". Such presentations did not stop with the beginning of the pilot. They continued either as introductory affairs for new members or as reports of progress, problems, difficulties, and solutions.

5.73 Enquiries were often made and responded to at the land titles office itself. Questions came from individuals who were just making initial applications to bring land into the system; questions also came from those making initial applications but whose work as assessors, engineers, planners, etc. had given them some acquaintance with the registry system, and who wanted more than general information about the system and how it worked.

5.74 Throughout the pilot enquiries on the part of the general public and organizations were taken very seriously and fully responded to.

Finance

5.75 The monies necessary to support the pilot came from the three Maritime Provinces through the LRIS budget. See 5.13 for more details.

Cost

5.76 The cost of the pilot is the amount of money budgeted for the project directly, plus that portion of the budget of the Land Titles and Legal Services Division LRIS (LT&LSD) which represented services provided directly in support of the pilot. Supplying PIDs through the Regional Office property mapper is estimated at $ 7000 per annum. This has not been applied to direct costs.

5.77 By fiscal year these monies amounted to:[76]

Year	Pilot	LT&LSD	TOTAL
1982-3		45 500	45 500
1983-4	74 400	18 400	92 800
1984-5	87 700	22 100	109 800
1985-6	73 700	9 600	83 300
1986-7	116 200	8 100	124 300
TOTAL	352 000	103 700	455 700

5.78 The LT&LSD charges for 1982-83 were, strictly speaking, not part of the pilot for it did not exist then. These costs were incurred, however, in the preparation for it and were so identified at that time. To go further back than 1982-3 for the purpose of costing preparations would probably not be very productive. The work involved with land titles and standard forms at that time becomes more general.

5.79 During the life of the pilot LT&LSD supported the project administratively and provided professional assistance in checking abstracts when the volume of first applications was beyond the capacity of the only solicitor with the pilot to handle expeditiously.

Fees

5.80 There were no fees charged during the pilot for first applications to bring property under land titles.

5.81 Subsequent transactions were subject to equivalent fees for transactions under the Registry Act.

Equipment

5.82 The following items of equipment costing over $200 were purchased for the pilot during its existence:[77]

Year	Item	Cost
1983-4	Word processor	$ 14900
	Acoustic cover	550
	Feed tractor	500
	Vertical file	1 900
	Refrigerator (for film temp control)	350
	Lens fiche holder	500
1984-5	OIS workstations (2)	8 700
	LIST software	750
	Printer	6 100
	Memorywriter	4 100
	Cabinet	950
	Cabinet stand	500
1985-6	Cabinet	1 200
	Power line conditioner	1 400
1986-7	Personal computer	4 200
	Cabinet	1 200
	Computer stand	250
	Workstation table	250
	TOTAL	$47 300

5.83 In all, $ 48,800 was spent for equipment. These purchases were made with per capita funds and hence are the property of LRIS.[78] The Province of New Brunswick will likely reimburse LRIS this expenditure once the pilot becomes a regular part of provincial operations.

Statistics

5.84 Statistical reports were compiled daily during the pilot. Annex "Q" lists initial applications and subsequent transactions, by category, effective 31 March 1987.

Rejected Applications

5.85 Twenty-three applications were rejected. The most common reason was the inability of the applicant to produce a chain of title going back 60 years. Vagueness of location was next on the list of reasons. Boundary disputes would result in rejection until the dispute had been settled. Overlapping claims also resulted in rejection. One application was rejected because its location was not compatible with its description; another rejection resulted from conflicting chains of title. One rejection arose from a complete inability to locate the lot described: the only thing certain was that it was said to be in Albert County.

Register Rectifications

5.86 No system operates very long without a blunder being made somewhere within it. The pilot was no exception to this universal rule. There were ten mistakes made during the pilot which resulted in title register rectification. All corrections were made with the consent of the owners. No other persons had come to depend upon the mistaken entries, so there was no need of the safety net provided by the assurance principle.

5.87 Two of the mistakes were the result of adjoining lots of the one owner being confused; one involved the incorporation of a wrong sliver in an amalgamation; one stemmed from a vague description; one was because of a wrong PID; another related to signatures on a mortgage; the remainder involved omitted mortgages.

Rejected Instruments

5.88 There were seven occasions when instruments presented at the titles office were not in proper form. Essentially, they did not have the legal effect they purported to have on their face, and the fault could not be rectified at the office.

Lots Identified
And Confirmed

5.89 During the pilot 6,539 lots which were not in the land titles system were identified and confirmed as to back title. When application was made to bring into the system a lot which had been created as a result of subdivision, the title of the subdivision had to be verified in order to accomodate the lot. Once the back title for the subdivision had been confirmed, titles to all lots in that subdivision were by that fact confirmed to the date of the subdivision. Hence when an application comes in for any one or more of these 6,539 lots, title will only have to be searched forward of the date of the subdivision.

Exemptions

5.90 During the pilot 141 exemptions were granted. This meant that the parcels in question could be transferred within the registry system rather than be brought under land titles. In effect, transfer was made without a title search. These instances were transfers by virtue of inheritance within families, or the transfer of isolated lots of small value where the cost of a title search might well have cost more than the value of the parcel -- a hunting camp, for example.

Pilot Termination

5.91 The pilot came to an end on 31 March 1987. The land titles system continues throughout Albert County as a part of the regular provincial system for registering interests in land. Some of the problems encountered through the pilot remain to be resolved. But its role as a pilot continues. The Albert County system of registration (both registry and land titles) will play a key part in the development of an integrated system of land information management which will eventually serve the whole of New Brunswick.[79]

Bibliography

5.92 At Annex "R" is a list of reports which relate in one way or another to the land title system developed by LRIS.

References

1 McGloan, T.L., Report of the Commission appointed by the Premier and Attorney General of New Brunswick, to enquire into the operation of the land titles systems of various provinces of Canada, and to report on the advisability of adopting a similar system in New Brunswick, 1961, Government of New Brunswick.

2 A later study Survey of The Law of Real Property by A.M. Sinclair and D.G. Rouse in 1976 for the Department of Justice reported: One of the major areas if not the most important area of reform of the law of real property lies in a change from a system of registration of documents under the Registry Act as we now have it to a system of land titles or Torrens system of registration of land titles. It is well known that the Maritime Provinces are undertaking an intensive study on land titles with a view to making uniform the issuance of certificates of land titles and the registration of land throughout those Provinces. It would be redundant for the writers themselves to attempt to initiate or carry out a program of studies on the registration of land titles. Accordingly it has been our thesis to proceed on the basis that eventually, and hopefully within the very near future, a system of land titles somewhat similar to that extant in other jurisdictions in the common law world will come into force in the Province.

3 Evans, P.H., Report on Atlantic/Maritime Interprovincial Cooperation Between 1950 and 1971, ISBN 0-920925-00-6, Masters of Public Administration, Dalhousie University, 1985, pp. 129-130.

4 Ibid. p. 158.

5 Executive Assistant, Premier of N.S., to Secretary, Council of Maritime Premiers, 26 Jan 72.

6 DREE proposal to Treasury Board re LRIS. Letter (unsigned) of 10 Jan 73, p.6.

7 Executive Director LRIS to Asst Secretary, Council of Maritime Premiers, 5 Apr 73; letter Asst Secretary CMP to Deputy Attorney-General, N.S., 29 May 73.

8 Deputy AGNS to Assistant Secretary CMP, 29 May 73 (P).

9 "Five Year Planning Document" -- Appendix "F", LRIS, Feb 86.

10 Ibid., pp. 3 and 4, and Appendix "G".

11 Ibid., p.8.

12 Hamilton, A.C., ed., "Proceedings of the Seminar Series on Land Information and the Land Surveyor", Canadian Institute of Surveying and Mapping, Ottawa, Oct 1986.

13 Registration was required at one time in New Brunswick in order to effect a transfer. This was abolished in 1902. For some discussion of registry systems in general and the N.B. system in particular, see Ouellet, A., Professional Liability In Conveyancing In New Brunswick, Ouellet, A., Carswell Co. Ltd., Toronto, 1986.

14 MacIntosh, C.W., "Proposal For Implementation of Phase III LRIS Program", 1975, p. 6.

15 Ibid. pp. 8 - 20.

16 Ibid. pp. 23 - 25.

17 Summary of Court Decisions and Cases Relating to Property Law in Nova Scotia, Volumes 1 and 2, LRIS.

18 MacIntosh, C.W., "Categories of Nova Scotia Legislation Provisions With Respect To Real Property -- Vol. I, Public Acts", Dec 1974.

19 MacIntosh, C.W., "Categories of Legislative Provisions With Respect To Real Property, Province of Nova Scotia -- Volumes II and III, Local and Private Acts", Dec 1974.

20 MacIntosh, C.W., "Categories of Legislative Provisions With Respect To Real Property -- Province of Prince Edward Island, Vol. I, Private and Local Acts", Dec 1974.

21 Hanson, H.A., "Statutes of New Brunswick Affecting Interests in Land", Nov 1974.

22 See, for example, MacIntosh, C.W. and Gavin, M.L., " Overriding Interests to Real Property in New Brunswick", LRIS, 1976, and equivalent documents with similar titles relating to Nova Scotia and Prince Edward Island by the same authors.

23 Proclaimed only in the Counties of Annapolis, Colchester and Halifax. Only one property is reported to have been brought under this Act.

24 No properties were ever brought under this Act. The Act was repealed on the proclamation of the new Act in 1983.

25 Unproclaimed.

26 Scammell, R.L., Asst Deputy Minister, Justice Services, interview, 9 May 87.

27 This material, with explanatory detail, is to be found in Brief in Support of Proposed Changes to Substantive Real Property Law, LRIS, 1976. Individual topics are addressed in twelve separate papers.

28 A few years ago in Nova Scotia a house was built on the wrong lot and was lived in for almost a year before the mistake was discovered. The later civil action resulted in a court order to remove the offending structure. It seems reasonable to suppose that had provincial legislation been in place about improvements under mistake of title, the judgement might not have required the removal of the house. Brean v. Thorne 1982, 52 N.S.R. (2d) 241.

29 "Land Titles Manual", N.B. Dept. of Justice, 1984.

30 Burns, J.R. and Jagoe, E.H.M., "Implications to Government Departments in New Brunswick of Implementing the Proposed Land Titles Act", 38 pp., Fredericton, 1978.

31 The material in paras. 4.04 to 4.10 is based largely on reports produced in 1980 by C.W. MacIntosh QC which outlined considerations for pilot projects in Nova Scotia and New Brunswick. One of the reports is specifically identified in footnote 32 below.

32 Agenda, Board of Directors LRIS, Item 1, dated 8 Jul 80.

33 Director, Land Titles and Legal Services.

34 MacIntosh, C.W., "Considerations Affecting a Proposed Land Titles Pilot Project in New Brunswick Including Options and Recommendations", C.W., Halifax, 1980.

35 Land Titles Act, S.N.B., 1981, c. L-1.1, s. 35(1).

36 Ibid. s. 17.

37 The quality of a title and the physical extent of it are two different things. It is quite possible to have perfectly good title to a parcel of land, the boundaries of which are unknown or uncertain. It is also possible to identify properties which have very distinct and uncontested boundaries but for which title is very doubtful. Bringing land of doubtful title under a land titles system may well cure the title defects. Bringing land of doubtful extent but of sound title under the system will not necessarily cure boundary problems.

38 Kimball, M.A. and MacIntosh, C.W., "Special Features of the Maritime Land Titles Act Enacted in N.B. and in N.S. and in force in Albert County", LRIS, 1987.

39 Land Titles Act, S.N.B., 1981, c. L-1.1, s.3.

40 Turta v. C.P.R. and Imperial Oil Ltd., 5 W.W.R. (N.S.) 529. Affirmed 8 W.W.R. (N.S.) 609, [1953] 4 D.L.R. 87.

41 S.N.B. 1980, c. S-12.2.

42 Scammell, R.L., interview, 9 May 87.

43 For example, the common law requires the words "to A and his heirs" in order to convey title in fee simple. Under title in fee simple there are no conditions, restrictions, or limitations. Fee simple is the highest degree of ownership possible in English common law. Without the phrase "and his heirs", only a life estate is conveyed.

44 The corresponding French terms were often borrowed from French civil law and did not have the same effect as the English terms.

45 Standard Forms of Conveyances Act, S.N.B., 1980, c. S-12.2, s. 0.1.

46 Leases Regulation -- Standard Forms of Conveyances Act, Schedule C, Covenant No. 11.

47 "Report of Committee on Land Titles Project to Government", 4 Nov 85.

48 Ouellet, A., in reference at footnote 12A, treats N.B. registry system in some detail.

49 Hunter, D., "Provincial Registry System -- Plan of Organization and LRIS Regional Office Development -- A Review", 1986.

50 Kimball, M.A., interview and Moncton Transcript, 21 June 1984.

51 Secretary CMP to all LRIS employees, 8 Sep 78.

52 Simpson, R.L., "LRIS -- The Basis for Land Information Systems", FIG Conference on the Decision Maker and Land Information Systems, Edmonton, 1984.

53 The material in paras. 4.40 to 4.49 incl. was summarized from MacIntosh, C.W., "Evolution of Land Titles Administrative Procedures", July, 1986.

54 Scammell, R.L., interview, 9 May 87.

55 Ibid.

56 Canadian History Readings, Hay, G.U. (ed.), Saint John, 1900, contains W.F. Ganong's "History in Boundary Lines -- Illustrated by New Brunswick".

57 Hence the deed resulting from a tax sale is issued by the province, not by the municipality.

58 The cost of operating LRIS was initially based upon relative populations. As projects came to be more directly related to other factors, this arrangement was modified. For example, the costs of the physical maintenance of the survey control system are borne by the individual provinces in which the actual work occurs; the overhead, that is, the cost of the mathematical maintenance, calculation of coordinate values, adjustment of the network, etc., is shared between provinces on the basis of the number of control monuments in each province. The population percentages are from the CMP Estimates for 1986-7.

59 Deputy Registrar General Land Titles, 10 Apr 87.

60 Land Titles Act S. 18 (7).

61 Gaudet, R.J., "Parcel Definition", LRIS working paper of Sep 86.

62 Director Land Titles and Legal Services to Director Property Mapping, 20 Dec 85.

63 Deputy Registrar General Land Titles to Right of Way Branch, Department of Transportation, 5 Feb 87.

64 MacIntosh, C.W., "Problem Areas Identified During Albert County Land Titles Project Together With Their Resolution", a working paper of Nov 86.

65 Ibid.

66 Director Land Titles and Legal Services to Executive Director LRIS, 31 Dec 84.

67 Hunter, D., "Addressing the Albert County Backlog", 22 Apr 86.

68 Ibid.

69 R.S.N.B. 1973, c. C-16.

70 MacIntosh, C.W., "Legal Incidents Affecting Title to Land", 15 Sep 86.

71 At last count (1984) in Nova Scotia there were at least 36 incidents which are created by statute.

72 Boyd v. Fudge (1964), 46 D.L.R. (2d) 679.

73 Railway Act, R.S. Canada, c.234, ss. 77-8.

74 La Forest, G.V., Water Law in Canada, Ottawa, 1973, pp. 277-8.

75 At the close of the pilot, it is anticipated that there will be an expansion of land titles into the cities of Moncton and Dieppe, and into the County of Westmorland. It is being proposed that the Deputy Registrar General of Land Titles (Ms. Mary A. Kimball) have a major responsibility in any such project, to wit: planning, drafting legislation, staff training, assisting in development of automated systems, and co-ordinating public relations.

76 McLaughlin, E., Divisional Accountant, LT&LSD.

77 Ibid.

78 Board Meeting Agenda, Tab F, 5 Mar 87.

79 Hunter, D., "Introduction to the Albert County Land Ownership System", LRIS, June 1987 is a description, intended for a general audience, of the current configuration.

ANNEX "A"

This material is Appendix "A" to "Agreement On Natural Resources and Land Information", July 12, 1973, between The Government of Canada and The Council of Maritime Premiers.

SURVEYING, MAPPING AND LAND REGISTRATION PROGRAM

The purpose of this Appendix is to provide a description of progress on the Surveying, Mapping and Land Registration Program in the Maritime Provinces till March 31, 1973, to indicate the general direction in which the program is expected to proceed in each of the phases, to outline the organization that will be required to continue the implementation of the program and to provide a general estimate of the cost of the program for the period from April 1, 1973 till 31 March, 1978.

Many factors such as the changing technology and the final feasibility of some parts of the program could contribute to revisions of the work schedule outlined and the interrelationship timing and costs of the phases. Therefore, this Appendix is intended to serve only as a general guide to the Management Committee in the implementation of the program.

Phase 1 - Phase 1 consists of the establishment of a second order control system of co-ordinates plus accurately located survey markers (monuments) in each province based on a first order geodetic survey implemented by the federal Department of Energy, Mines and Resources. This phase is now complete in Prince Edward Island, 54% complete in New Brunswick and 25% complete in Nova Scotia. It is anticipated that it can be completed throughout the Maritimes by the autumn of 1977.

The total cost of this phase is expected to be in the neighbourhood of $4,689,000 of which Canada's share would be $3,517,000.

Phase 2 - This phase involves the production of maps of various types and scales to maeet growing demands associated with resource management, urban development and property identification.

Resource mapping is expected to be completed by 1974 in Prince Edward Island, and by 1983 in Nova Scotia and New Brunswick

Urban mapping was started under the program in 1968. Scales used are 1" to 100' and 1" to 400'. In Prince Edward Island, where this aspect of mapping is just geting underway, it is planned to have the mapping of Charlottetown, Summerside and five smaller communities completed by the end of 1974. In Nova Scotia and New Brunswick, the mapping of a number of growth centres, cities and towns has been completed and the overall urban mapping program will, by the end of 1972, be 33% complete in Nova Scotia and 60% complete in New Brunswick. It is expected that complete coverage will be attained by 1978.

Property mapping is well underway in Prince Edward Island and a start was made in New Brunswick in 1971. In Nova Scotia and New Brunswick approximately 80,000 land parcels - ranging in size from small to very large - will be mapped each year until total coverage is achieved by 1979.

The cost of this phase is expected to be $8,085,000 for the five-year period of the Agreement, of which Canada's share will be $6,064,000.

Phase 3 - Utilizing the survey and map data acquired during Phases 1 and 2, implementation of Phase 3 would bring about conversion of the present system of land registry in the provinces to a computerized land titles system. In essence, this involves identifying all parcels of land in relation to the system of control co-ordinates, instead of by the metes and bounds system presently in use, and recording this information in a systematic way. Eventually it is intended that ownership data will be made complete enough to allow the system to provide insured guaranteed title to any piece of land covered. This concept precludes time-consuming, costly title-searching and re-survey, and makes possible the fast transfer of land ownership

together with indefeasible title. Phase 1 provides survey information to establish accurate co-ordinate location and Phase 2 provides the necessary visual display in the form of suitable maps.

The full implementation of Phase 3 is a long-term project, the exact timing of which will depend on a large number of factors. The major steps entailed in this phase are:

a) in areas where property mapping has been completed, changing the present land registry system to an improved registration system based on the use of a parcel index;

b) the drafting and adoption of property laws which will be compatible with the application and effective working of one improved land registration system throughout the three provinces;

c) a planning study to determine the most feasible method of applying the land titles concept to the local requirements of the Maritime Provinces;

d) the setting up and continuing administration of a Maritime Land Titles Office;

e) the progressive amalgamation of the present 39 registry offices in the Maritime Provinces into a smaller number of district land registration offices, all having direct communications with the Maritime Land Titles Office.

f) the administration of the district land registration offices.

During the initial stages of implementation high costs will be incurred. Until a new system has been completed and checked, the old system will have to be operated in paralled. Federal funding for this phase in each area will be provided only until such time as the new system is technically and demonstably operational; costs incurred after that stage largely because of legislative, administrative or any other factors, will be borne by the Provinces.

The cost to Canada during this five-year agreement will likely be $5,142,000 of a total estimated cost of $6,858,000.

Phase 4 - To ensure that maximum benefits are derived from the program, there will be a need for a land data retrieval system. At the time of signing of this Agreement, it is impossible to say what the exact nature of this system will be. Funds are provided under this Agreement for the investigation of a range of alternatives. Depending on the results of feasiblility and planning studies, the federal government is prepared to consider the possibility of a separate agreement for the funding of a regional data system either as a separate part of this program or through some other program or mechanism.

The cost of research on this part of the program during the five-year period covered by the agreement will be an estimated $586,000, of which Canada's share will be $440,000.

THE LAND REGISTRATION AND INFORMATION SERVICE

To facilitate the planning and implementation of this program, the Council will establish a Land Registration and Information Service (LRIS). In accordance with general direction and standards set by the Management Committee, this agency wil be responsible for the organization and implementation of the various phases of the program, including scheduling, standardization of tender documents and contracts, contract awards and the supervision and surveillance of the work. The head of LRIS will also act a Secretary of the Management Committee, but will not be a member thereof.

In addition to the head, there will be a full-time staff whose number will vary according to the flow of work in the program. It is estimated that approximately 143 employees will be required for the Surveying and Mapping Division of LRIS to implement Phases 1 and 2 of the Agreement.

The LRIS will require a further 28 employees (approximately) to carry out the systems planning, land statistics, systems investigation, and central administrative functions. The number of employees required for the implementation of Phase 3 is not yet clear. It should be emphasized that all of the above numbers are only estimates based upon expected activity levels over the early years of the Agreement.

The cost of the central component of the LRIS (systems planning and investigation, land statistics and administration) is estimated to be $1,654,000 for the five-year period of the Agreement, of which Canada's share will be $1,241,000.

File: ANNEX "B"

TERMS OF REFERENCE FOR A PLANNING STUDY TO DETERMINE THE MOST FEASIBLE METHOD OF APPLYING THE LAND TITLES CONCEPT TO THE **LOCAL REQUIREMENTS OF THE MARITIME PROVINCES**

To report on the implications and effects of implementing Phase III of the LRIS Program as referred to in the relevant agreement between the Council of Maritime Premiers and the Government of Canada, in Appendix A to that Agreement and in the Agreement between the Three Maritime Provinces and the Council of Maritime Premiers.

IN PARTICULAR:

(1) To examine the existing registry systems and the Registry of Deeds offices and determine:

(a) The purposes intended by the existing systems, the function of and the uses made of the existing Registry Offices;

(b) The inter-relationship of the Registry of Deeds Offices with other public and municipal offices;

(c) The provincial/municipal financial arrangements relating to the the existing Registry Offices;

(d) The reasons for a change in the matter of land registration in the Province.

(2) To examine the projected LRIS Program Phase III and determine:

(a) The legal implications of the program and its effects on the multi-functional purposes of our present Registry Offices;

(b) Whether it is desireable to consider modifying Phase III, notwithstanding that modifications might result in systems not common to all provinces but complementary and compatible, capable of utilizing common facilities, equipment and personnel;

(c) The relevant Provincial Statutes and Common Law affecting ownership and interests therein and any legislative changes needed to implement the program both during its initial stages and during the period required for the continuance of parallel systems;

(d) The effects of any changes which implementation of the program will cause to existing registry systems during initial introduction, the time period for maintaining parallel systems and the requirements for continuing existing registry office functions not contained in the new program;

(e) The implications of the proposed system to lawyers and others involved in searching and certifying land titles.

ANNEX "C"

SIMULATED LAND TITLES SYSTEM

Simulation 1

The Registry of Deeds office would continue its business as usual while a "behind the scenes" simulated land titles office would be operated.

The operation of a simulated land titles office would not require proclamation of the Land Titles Act as a simulated system would have no legal effect. The staff would select and complete a Land Titles Act form equivalent to each document registered under the registry system after the simulated office had been set up. Each time a property was dealt with under the registry system, the staff in the simulated office would identify the parcel index number for the land concerned, examine all registry documents for their context and effect and select the land titles forms and accompanying documentation which most nearly approximates the registry document. The information required to translate a registry document into a land titles document would then be filled in on the land titles standard form document and the document would then be processed through the model office.

This option was the subject of a short-term project. Documents registered in the Halifax Registry of Deeds for a single day (approximately 120 documents) were translated into land titles documents. It required about one hour to classify, identify and reformat each registry document. Thus, the simulated land titles office would require two lawyers and one clerk to accomplish this portion of the project. The property identification aspect of the project would require one property mapper to assign parcel index numbers to properties brought into the simulated system.

Costs for these personnel (approximately $80,000) would be in addition to those costs listed in para. 4.11 of the main report.

Simulation 2

An alternative would be to pay members of the legal profession to generate a duplicate set of Land Titles Act documents each time they drafted Registry Act instruments for a client. In this way, a constant stream of Land Titles Act documentation would be filed at the model office, reflecting actual transactions taking place in the community. This would provide the model office with documentation to process which would reflect real transactions at realistic intervals so the capacity to handle actual volume could be explored.

Assuming that the bar is amenable to the preparation of the land titles documents each time a registry transaction takes place, the estimated cost would be $100 per transaction. Thus the cost for the following three counties would be:

Pictou	$231,200
Hants	$155,700
Colchester	$201,800

These estimated costs represent legal fees only and would be in addition to those itemized in para. 4.11 of the main report.

PILOT PROJECT
District Assessment--Nova Scotia
1980

	Pictou County	Colchester County	Hants County	Antigonish County	Halifax County*
Quality of Property Mapping	Accept.	Accept.	Accept.	High	Low
Registry Volume	Accept.	Accept.	Accept.	Too Low	Too High
Local Bar Support	Strong	Strong	Accept.	Low	Accept.
Size of Local Bar	Accept.	Accept.	Accept.	Accept.	Too Large
Rural/Urban Mix	Accept.	Accept.	Accept.	Accept.	Accept.
Proximity to LRIS Reg. Office (km)	0	65	73	65	0
Proximity to Land Titles Headquarters	117	105	73	240	0
No. of Parcels	24,263	23,719	17,822	8,697	48,647
Total Documents Per Year Avail.	13,024	12,564	9,385	4,231	Not
Total Documents Per Day	52	50	38	17	"
Deeds Per Year	2,312	2,018	1,557	771	4,641
Deed/Document Percentage Avail.	17%	16%	17%	18%	Not
Deeds Per Day	9	8	6	3	"
Property Turnover Rate (%)	9.5%	8.5%	8.7%	8.8%	"

*Less Metro

Document Registration Data is for year 1979.

PILOT PROJECT
District Assessment—Nova Scotia
1980

	Dartmouth City	Halifax City	District Guysborough	District St. Mary's
Quality of Property Mapping	Low	High	Low	Low
Registry Volume	Good	Good	Too Low	Too Low
Local Bar Support	Strong	Strong	Don't Know	Don't Know
Size of Local Bar	Too large	Too large	Too small	Too small
Rural/Urban Mix	Urban	Urban	Rural	Rural
Proximity to LRIS Reg. Office (km)	0	0	129	129
Proximity to Land Titles Headquarters	0	0	258	194
No. of Parcels	15,666	28,986	6,522	3,073
Total Documents Per Year	8,750	Not Avail.	2,167	758
Total Documents Per Day	35	"	9	3
Deeds Per Year	2,500	2,127	518	149
Deed/Document Percentage	29%	Not Avail.	24%	20%
Deeds Per Day	10	9	2	.6
Property Turnover Rate (%)	16%	7.3%	8%	4.8%

Document Registration Data is for year 1979.

ANNEX "E"

PILOT PROJECT
District Assessment--New Brunswick
1980

	Saint John	Kings	Ch'tte	West-morland	Albert	Kent
Quality of Prop Map	Acc	Acc	Low	Acc	Low	Low
Registry Volume	Med	Med	Low	High	Low	Low
Prop Transfer Rate	Med	High	Med	Med	High	Low
Rural/Urban Mix	Acc	Acc	Rural	Acc	Acc	Rural
Anticipated Local Bar Support	Acc	Acc	*	Acc	Acc	*
Anticipated Public Reaction	Acc	*	*	Acc	Acc	*
Prox. to LRIS Reg Office (km)	0	40	109	0	0	70
Local Resources to support office	High	Med	Low	High	High	Low
Bilingual documentation	Low	Low	Low	High	Med	High
No. of Parcels	23,660	25,114	15,846	55,925	12,058	26,415
Total Docs per year	6,686	7,098	2,923	13,374	3,308	3,475
Total Docs per day	30	32	13	60	15	16
Deeds per year	2,158	2,767	1,295	4,951	1,350	1,916
Deed/Document %	32%	39%	44%	37%	40%	55%
Deeds per day	10	13	6	23	7	9
Prop turnover rate	9%	11%	8%	9%	11%	7%
Avg. value per sale	42,300	42,300	N/A	40,400	40,400	40,400
Size of immediate legal community	137	10	10	90	4	12
Size of expanded service area legal community	157	147	147	106	106	102

* Indicates insufficient data to reach any conclusion

Acc indicates acceptable

Form 47

ANNEX "F"

CERTIFICATE OF REGISTERED OWNERSHIP

Land Titles Act, S.N.B. 1981, c. L-1.1, s.63

THIS IS TO CERTIFY THAT:

Mary Anne Kimball, of 70 Alma Street, Moncton, New Brunswick, solicitor, is the registered owner and holds title in fee simple, by deed registered as number 106701, to the land described in Schedule "A" attached hereto being parcel 00981118 as shown on the diagram attached hereto as Schedule "B".

The title to the land is subject to the overriding incidents specified in the Act printed on the reverse of this certificate or attached hereto and also to the following encumbrances, liens, estates or interests:

Mortgage number 106702 registered on 19 February 1986 from Mary Anne Kimball, of 70 Alma Street, Apartment 10, Moncton, New Brunswick, solicitor, to The Royal Bank of Canada, of 721 Main Street, Moncton, New Brunswick, a chartered bank, for $53,505.00 at 10.75% per annum calculated half-yearly not in advance, for a term of 2 years with payments of interest up to the interest adjustment date, 1 March 1986, and thereafter principal and interest in monthly instalments of $534.79 each on the first day of each and every month in each and every year from and including 1 April 1986 to and including 1 March 1988, and the balance on the date last mentioned (Covenants as stated in the mortgage).

Joint utility easement as shown on Plan 61331.

The title to the land may be subject to the following instruments, which have been entered on the instrument record and may be entered on the title register when the registration process is completed:

NONE

THIS CERTIFICATE is evidence of the particulars contained herein as of the date and time of its issue.

Neither the description nor the diagram are conclusive as to the boundaries or extent of the land.

Dated on 17 April 1986, at 0930 hours.

Registrar of Land Titles for
the District of Albert County

Land Titles Act

17(4) Unless the contrary is expressly declared in the title register, all registered land is, by implication and without any special mention in the title register, subject to the following overriding incidents:

(a) any subsisting exceptions, reservations, covenants and conditions in favour of the Crown contained in or implied by grant of the land from the Crown or excepted or reserved by statute, including any standing trees and timber vested in the Crown;

(b) the right of a lessee under a subsisting lease or agreement for a lease for a period not exceeding three years where there is actual occupation of the land under the lease or agreement;

(c) any right of a spouse of the registered owner to occupy the land under the Marital Property Act;

(d) any right granted by or under an enactment of Canada or the Province

(i) to enter, go across or do things on land for the purpose specified in the enactment,

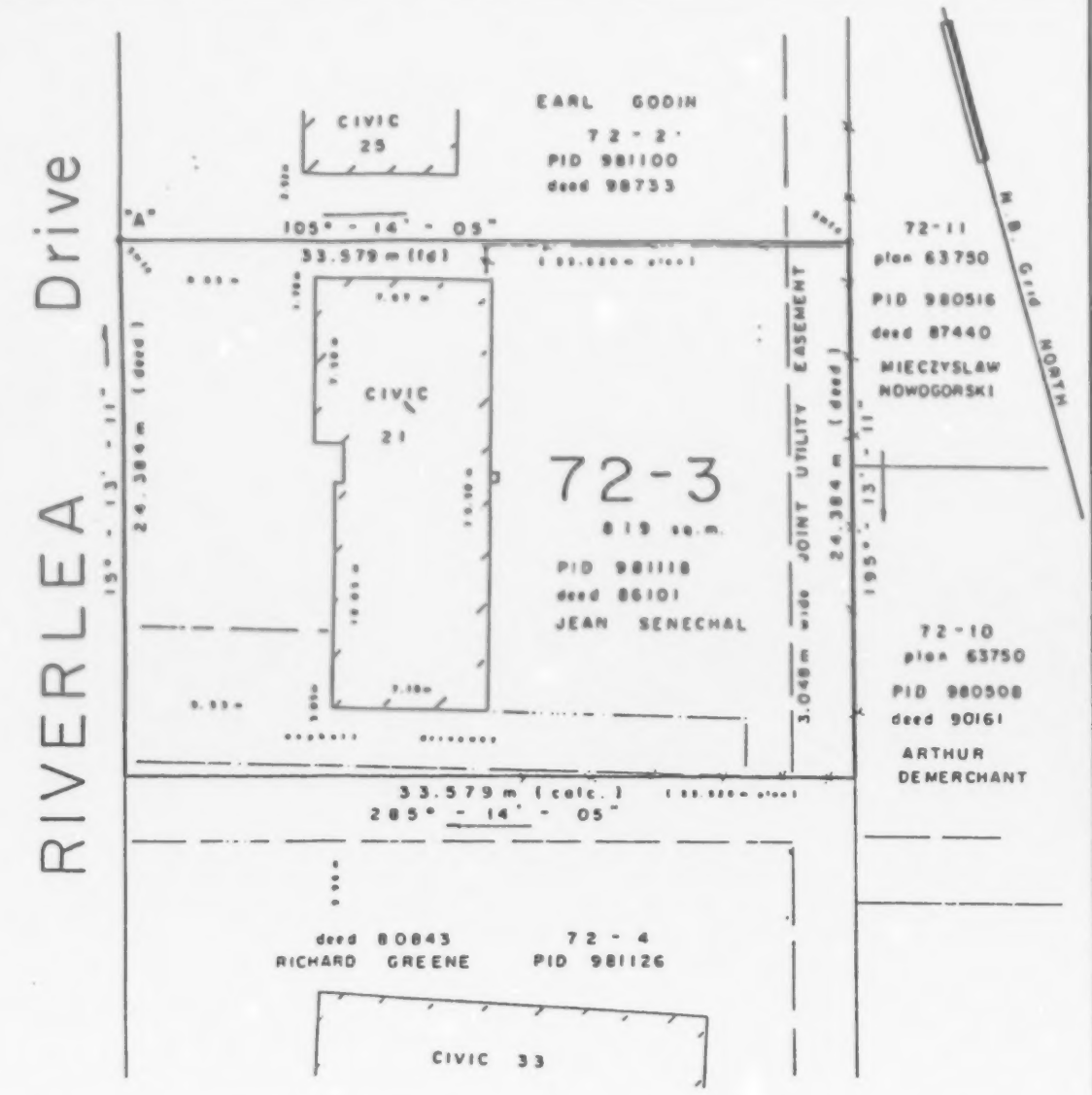
(ii) to recover taxes, duties, charges, rates or assessments by proceedings in respect of land,

(iii)to expropriate land,

(iv) to restrict the use of land, or

(v) to control, regulate or restrict the subdivision of land;

(e) any lien under the Mechanics' Lien Act where the time within which the claim of lien is required to be filed has not expired.



BUILDING LOCATION SURVEY
OF THE PREMISES TO BE ACQUIRED BY

Mary KIMBALL

LOT No. 72-3
SUBDIVISION Amending POINT PARK ESTATES
PLAN No. 61331
LOCATION 21 Riverlea Dr.
C.,T. or V. RIVERVIEW
PARISH of COVERDALE
COUNTY of ALBERT
PROVINCE of NEW BRUNSWICK

Scale 1:200 (Metric) DATE Feb 5, 1986

NOTE

1. ALL AZIMUTHS REFER TO N.B GRID AND ARE ROUNDED TO THE NEAREST 10"
2. ALL BUILDING TIES ARE TAKEN TO BUILDING FOUNDATION AND ARE ROUNDED TO THE NEAREST 0.01 metre.

LEGEND

SURVEY MARKER SET
SURVEY MARKER FOUND
IRON PIPE FOUND
FENCE
BUILDING

CERTIFICATION IS NOT MADE AS TO LEGAL TITLE, NOR TO APPLICABLE ZONING BY-LAWS

N.B GRID CO-ORDINATES					
Description	Easting			Northing	
Mon 16940	434	963	.213	754	068 .680
Mon 16941	434	646	.253	754	197 .408
S M "A"	435	007	.745	754	213 .281

SURVEYOR'S CERTIFICATION

I, JAMES C HENDERSON, DO HEREBY CERTIFY THAT THIS "BUILDING LOCATION SURVEY" IS CORRECT.

James C. Henderson
James C. Henderson - N.B.L.S

HENDERSON SURVEYS LTD.
150 TAITES ROAD,
RIVERVIEW, N.B
E1B 3L9 386-8262

Job No 15203 Plan No 14U325E Sheet No 5 L.

Parcel 00981118

Schedule "A"

All that certain lot, piece or parcel of land and premises situate, lying and being in the Town of Riverview in the County of Albert and Province of New Brunswick, shown as Lot 72-3 on a plan of lands entitled "Amended Subdivision Plan of Unit No. Four, Point Park Estates Subdivision, amending portions of Plan No. 60786, north side, Hillsborough Road (N. B. Route No. 114), Gunningsville, Albert County, N. B.", which plan was filed in the Albert County Registry Office on 6 July 1972 as number 61331.

ANNEX "G"

Regulations
under the
LAND TITLES ACT

General

Broadly speaking the Regulations provide the following:

a. Details of how the Act is to be administered. For example, Albert County is designated as a district, and the hours of the land titles office are prescribed.

b. The content and the format of the forms prescribed for the purposes of the Act. These are set out in detail in Schedule A.

c. The fees prescribed for the purposes of the Act are set out in Schedule B. During the pilot project there were no fees levied for a first registration.

d. The covenants and conditions and the numbers corresponding to each covenant and condition prescribed pursuant to subsection 25 (4) of the Act are the "Statutory Mortgage Covenants" of Schedule C.

e. The covenants and conditions and the numbers corresponding to each covenant and condition prescribed pursuant to subsection 27(2) of the Act are the "Statutory Lease Covenants" of Schedule D.

Boundaries

Section 13(2) stipulates that the description and diagram of registered land are not conclusive as to the bundaries or extent of the land.

Forms

The forms prescribed under the Act are 61 in all, viz.:

No.	Form
1	Application for First Registration of Title
2	Affadavit of Verification
3	Certificate of Solicitor
4	Consent to First Application
5	Notice of First Application
6	Statement of Claim
7	Affadavit of Claim
8	Notice of Hearing
9	Order for Registration of Title
10	Notice of Registration
11	Amendment
12	Postponement
13	Transfer
14	Easement
15	Mortgage
15.1	Collateral Mortgage
16	Application for Optional Mortgage Covenant
17	(Partial) Discharge of Mortgage
18	Release of Covenantor
19	Lease (and Option)
20	Notice of Lease (and Option)
21	Application for Optional Lease Covenant
22	Surrender of Lease
23	Assignment
24	Caveat
25	Notice of Caveat
26	Order to Withdraw Caveat
27	Notice to Caveator
28	Withdrawal
29	Application for Stop Order
30	Stop Order
31	Notice of Stop Order
32	Affadavit to Prevent Registration
33	Certificate of Pending Litigation
34	Application to Register Memorial of Judgement
35	Notice of Registration of Memorial of Judgement
36	Notice to Judgement Creditor
37	Statutory Declaration of Attorney
38	Notice of Bankruptcy
39	Notice to Trustee
40	Application for Registration after Tax Sale
41	Application for Registration of a Certificate of Transmission

42	Certificate of Transmission
43	Affadavit of Execution
44	Certificate of Execution
45	Affadavit of Corporate Execution
46	Certificate of Search
47	Certificate of Registered Ownership
48	Application of Survivor
49	Consent to Rectification of Title Register
50	Notice of Intention to Rectify Title Register
51	Recall of Document
52	Notation of Title Register Rectification
53	Notice of Proposed Application to Court
54	Affadavit of Value
55	Affadavit of Marital Status
56	Debenture
57	Application to Register Debenture
58	(Partial) Discharge of Debenture
59	Notice of Crystallization of Debenture
60	Certificate of Alphabetical List Search

ANNEX "H"

N.B. LAND TITLES ACT

The Act was assented to on July 18th, 1981 and came into force in Albert County on July 9th, 1984. The intent and purpose of the Act is to:

> provide a system for the registration of title to land in the Province and instruments related thereto and to provide statutory authority for guaranteed land title.[1]

The Act applies to every parcel of land, including land owned by the Crown, though provision is made for exceptions.[2] Instruments cannot be recorded under the **Registry Act** if the **Land Titles Act** applies.[3] The Act binds the Crown.[4] "Land" does not normally include mines or minerals.[5] A Registrar General of Land Titles is provided for; registrars are provided for each district.[6]

1 S. 1.
2 S. 2(1), (2).
3 S. 2(3).
4 S. 2(7).
5 S. 3.
6 S. 5(1), (3).

Any owner of land may apply to bring the title under the system[7] through an application accompanied by an abstract of title certified by a barrister and evidence that the provisions of the **Community Planning Act**, if applicable, has been complied with.[8] Once the registrar is satisfied the application is complete the application is forwarded to the Registar General[9] who gives notice to each person who appears to have an interest in the land.[10] A person so notified may file a consent;[11] before making an order for registration the Registrar General shall consider any such consents[12] and when satisfied shall direct that title be registered subject to the interest.[13] A person having a claim not recognized in the application may, before registration of title, file a statement of claim;[14] the Registrar General may hold a hearing and may subsequently make an appropriate order.[15] He may also hold a hearing to determine what registration should be made with respect to a condominium.[16] Where the Registrar General is satisfied with title to land he shall make a order directing title to be registered on expiration of ten days after receipt of the order unless an appeal is taken.[17] First registration may also take place as a result of a court order[18] or by order of the Registrar General himself.[19] Once the order for registration is made the solicitor who certified the abstract of title is not liable with respect to it.[20]

7 S. 11(1).
8 S. 11(2).
9 S. 12(1).
10 S. 12(4).
11 S. 12(5).
12 S. 12(7).
13 S. 12(8).
14 S. 12(11).
15 S. 12(12), (13).
16 S. 14.1(1).
17 S. 12(16).
18 S. 13(1).
19 S. 14.
20 S. 12(18).

No estate or interest passes until the instrument reflecting it is registered;[21] a registered owner claiming otherwise than as a purchaser for valuable consideration has no better title than that held by his immediate predecessor.[22] The owner shown by the register holds the land in fee simple subject to overriding incidents and such interests as are shown on the register.[23] After title has been registered no interest can be acquired by another through adverse possession and no rights can be acquired by prescription.[24] If easements have previously been enjoyed prior to registration the holder may apply to the courts for relief;[25] the courts may order the title register rectified or determine compensation that should be paid.[26]

21 S. 15(1).
22 S. 15(4).
23 S. 16.
24 S. 17(1).
25 S. 17(2).
26 S. 17(3).

The registrar shall stamp every instrument received with the date and time of receipt and a serial number.[27] A registrar may refuse an instrument which does not relate to land in his district, or does not describe the land by its parcel index number, or is not in proper form, or does not comply with the **Community Planning Act**.[28] Where title is registered the registrar cancels the existing certificate of registered ownership, if any, and makes out a new certificate.[29] Every parcel of land which is registered must have a distinctive parcel index number[30]. Where a document sufficient to pass an estate or interest under **The Registry Act** deals with land registered under this Act the Registrar General may order the proper registrar to register it under this Act.[31]

27 S. 18(1).
28 S. 18(4).
29 S. 18(5).
30 S. 18 (7).
31 S. 18(12).

Instruments and interests affecting the same land shall be entitled to priority according to the order of their serial numbers.[32] Every transfer of land shall operate as an absolute transfer of all such right and title that the transferor has unless a contrary intention is expressed in the transfer.[33] Where an easement or right in or over land is granted the instrument may be registered in respect of the dominant and the servient tenement;[34] where there is no dominant tenement the registrar shall assign a parcel index number and the easement shall be registered in the name of the owner.[35] Registered land may be mortgaged by registration of a mortgage.[36] Every lease of registered land for a period exceeding three years shall be registered.[37]

32 S. 19(1).
33 S. 22(1).
34 S. 24(1).
35 S. 24(2).
36 S. 25(1).
37 S. 27(1).

Any person claiming an interest in registered land may register a caveat; upon registration the registrar shall give the registered owner notice.[38] Notwithstanding that a caveat is registered, it shall not have the effect of creating any interest, but while it remains in force the registrar shall not register any other instrument affecting the land except subject to it.[39] Any person who has sustained damage by reason of a caveat having been registered has cause of action against the caveator.[40]

38 S. 30(1), (2).
39 S. 31(1).
40 S. 35(1).

Where the registrar is satisfied that an error on the register should be corrected he may issue a stop order to prohibit the registration of any instrument affecting the land.[41] A registered owner may file an affadavit on account of special circumstances to request that an instrument affecting his land not be registered.[42] The registrar is not obliged to register an instrument severing or consolidating registered land unless the provisions of the **Community Planning Act** have been complied with.[43] A judgement creditor may file an application to register a memorial of judgement.[44] A power of attorney that describes registered land by its parcel index number may be registered.[45] There may be registered, in respect of any land that is being or has been registered, an instrument containing a condition or a covenant.[46] The registrar shall receive instruments evidencing an expropriation of registered land.[47] Where pursuant to **The Bankruptcy Act** a receiving order is registered, the registrar shall register the title to the land in the name of the trustee and give notice to the owner and to each owner of an interest in the land.[48]

41 S. 36(1).
42 S. 37(1).
43 S. 39.
44 S. 40(1).
45 S. 47(1).
46 S. 48(1).
47 S. 49.
48 S. 50(1).

Where registered land is sold for taxes the purchaser may register a certificate of tax sale;[49] where the land is redeemed a notice to that effect is issued to the registrar and he shall register the notice and cancel the registration of the certificate.[50] Where the owner of registered land dies his title shall be registered in the name of his personal representative who is an administrator duly appointed by a Probate Court or an executor. When registered land is transmitted in consequence of the death of the owner, the personal representative shall apply to the registrar for registration of a certificate of transmission; every certificate of transmission shall have annexed thereto the certificate of registered ownership of that land.[51] A person dealing with a transfer in registered land from the owner is not bound to inquire into or ascertain the circumstances in or the consideration for which the owner is or was registered, nor is such person affected by notice, direct or implied, of any unregistered instrument or interest or claim affecting the land.[52]

49 S. 51(1).
50 S. 51(2).
51 S. 53(1), (2), (3).
52 S. 61(1).

Any person on payment of a fee may require the registrar to make a search in respect of any parcel of registered land and is entitled to receive a certificate of search[53] which shall contain a statement of all subsisting entries on the title register in respect to the land.[54] Any registered owner on payment may require the registrar to issue a certificate of registered ownership which shall contain a statement of the owner's interest and subject to the exceptions stated therein.[55]

53 S. 62(1).
54 S. 62(2).
55 S. 63(1).

Where two or more persons are registered owners as joint tenants of any land or interest and one of the owners dies, the registrar shall register the land or interest in the name of the survivor as owner.[56]

56 S. 65.

Subject to section 71 and to the approval of the Registrar General, the registrar may rectify the title register with the consent of the all persons interested;[57] similarly the court may make an order directing the registrar to rectify the title register where the court is satisfied any person is entitled to any estate or interest or where the applicant is aggrieved by an entry made or by the omission of any entry.[58] The title register shall not be rectified so as to affect detrimentally the title of the registered owner who is in possession unless such owner had knowledge of the omission, fraud or mistake for which rectification is sought.[59] Any person who suffers damage by reason of the rectification of the title register, an error or omission in the title register which is not rectified, an error or

omission in a certificate of registered ownership or a certificate of search or loss or destruction of any document lodged at a land title office for inspection or safe custody is entitled to be indemnified.[60]

57 S. 68.
58 S. 70(1).
59 S. 71.
60 S. 73(1).

Upon application the Registrar General may award a claimant an amount as indemnity and an amount for reasonable expenses incurred.[61] Any application shall be commenced not later than two years from the date the applicant knew of the event that occasioned the damage.[62] Any person dissatisfied with a decision of the Registrar General or registrar may require him to provide written reasons for the decision.[63] Any person who is dissatisfied with a decision of the Registrar General or a registrar may make application to the court for relief.[64]

61 S. 74(1).
62 S. 78.
63 S. 79(2).
64 S. 79(3).

The Lieutenant-Governor in Council may make regulations under this Act.[65]

65 S. 83.

The Land Titles Act, chapter 22 of the Acts of New Brunswick, 1914 is repealed.[66]

66 S. 85.

This Act or any provision thereof comes into force on a day fixed by proclamation.[67]

67 S. 86.

ANNEX "I"

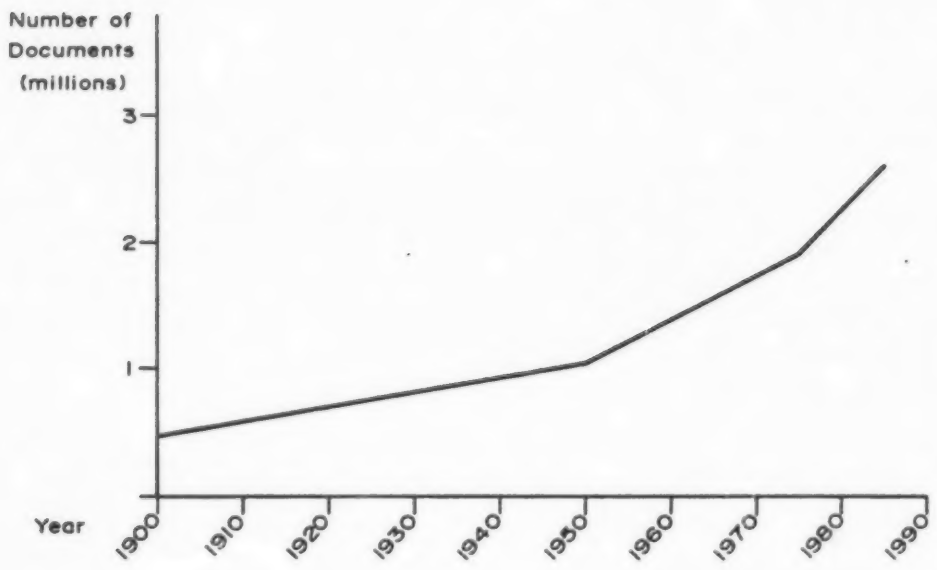
PROVINCIAL REGISTRY OFFICES LOCATIONS 1986

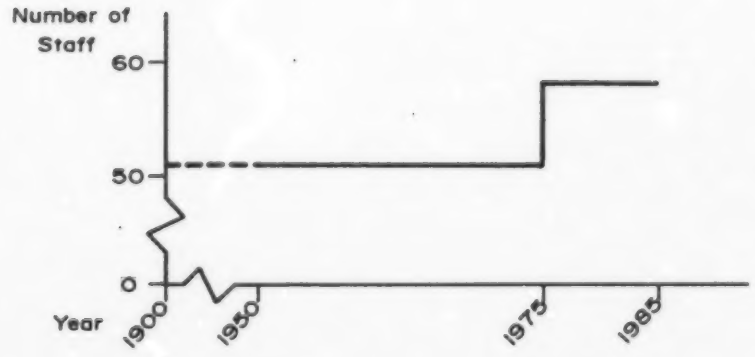
(Figures are total real property transactions 1986)

Real Property Documents and Staff

REGISTRY OFFICES

YEAR	BOOKS	DOCUMENTS	STAFF
1900	1,129	458,300	Unknown
1950	2,640	1,080,400	51
1975	5,280	1,868,100	58
1985	8,709	2,623,700	58





Real and Personal Property Transactions

ALBERT COUNTY

DOCUMENTS	1982	1983	1984 (April 1 to March 31)	1985	1986
Land Titles System	-	-	-	846	2159
Registry System	2253	2666	3501	3530	3925
Chattel Mortgages	1622	2481	2940	2484	2630
Conditional Sales	631	509	939	649	812
	4506	5656	7380	7590	9526
Increase on previous year		25%	30%	3%(a)	25%

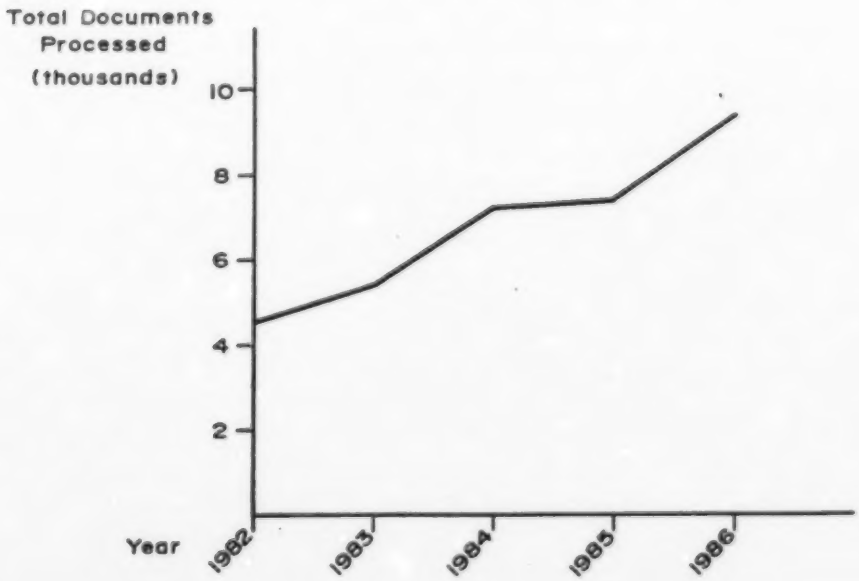
STAFF

Land Titles			2	2	4
Registry	2	2	2(b)	2	2(c)

NOTES: (a) throughout the province as a whole, fewer documents were deposited in 1985 than in 1984.

(b) plus one casual for 10 weeks.

(c) plus one casual for 50 weeks.



ANNEX "L"

PUBLIC RELATIONS

Presentations were give on land titles to the following organizations:

NB Continuing Legal Eduation Society

Canadian Bar Association -- NB Branch

Law Society of New Brunswick

Moncton Barristers' Society

Fredericton North Rotary Club

Association of NB Land Surveyors

Canadian Institute of Surveying -- Fredericton Branch

Nova Scotia Continuing Legal Education Society

Advanced Management Training Centre

Moncton Mortgage Lenders Association

Greater Moncton Real Estate Board

All local and County Bar Societies in New Brunswick -- nine in total

LIS-90 Workshops

Presentations were made to lawyers in various N.B. government, and in public legal education forums and panel discussions.

Shopping centre displays were arranged during Law Week.

ANNEX "M"

Extracts from an Agreement made between the Governments of New Brunswick, of Nova Scotia, and of Prince Edward Island and the Council of Maritime Premiers dated March 17th, 1980.

WHEREAS the Provinces of Nova Scotia, New Brunswick and Prince Edward Island have been carrying out a program of land surveying and mapping in the provinces so as to enable the more efficient management of their natural resources and the possible eventual conversion of the present systems of land registration in the provinces to a land titles system;

AND WHEREAS the Provinces wish to continue with this program;

AND WHEREAS the Provinces, being of the opinion that a single agency would better ensure effectiveness, co-ordination and efficiency in the planning and implementation of the program, wish to constitute the Council as their agency for those purposes

....

THE PROGRAM

4. The Council will undertake and continue the land registration and information program ... within the Maritime Provinces consisting of the following:

Phase I

The emplacement and maintenance of a co-ordinate system of control surveys.

Phase II

The production of aerial photography.

The production and revision of large scale maps.

The production of property maps.

The establishment and maintenance of a parcel index file.

Phase III

The provision of assistance in the implementation of an improved system of land registration.

General

The provision of such other services as are agreed upon by the provinces and the Council from time to time.

....

APPOINTMENT OF A BOARD OF DIRECTORS

8(1) A Board of Directors of the Service shall be appointed by the Council as follows:

(a) three from New Brunswick;

(b) three from Nova Scotia;

(c) three from Prince Edward Island; and

(d) at least three others.

....

DUTIES OF THE BOARD

9. The purpose of the Board shall be to direct the operations of the Service and the program, including:

(a) approving project priorities and the timing and location of work;

(b) exercise of supervision over the operations of the Service;

(c) approving the type and volume of services to be provided by the Service;

(d) recommending to Council the scale of fees to be charged for services and products supplied by the Service; and

(e) the performance of such other functions relating to the activities of the Service as the Council prescribes.

....

FINANCING

14. The portion of the costs of operating the Service that is not recoverable through other means will be borne by the Provinces in the proportions agreed upon by Council.

15. The Provinces, in a manner agreed upon by the Council, will put and keep the Council in funds to enable it to meet the operating expenses of the Service.

....

GENERAL

....

24. This Agreement shall become effective from the 1st day of February 1980, and thereafter remains in effect unless and until at least one year's notice in writing of intention to terminate on the 31st day of March of the year next following is given by one or more of the parties hereto to the other parties.

....

ANNEX "N"

Steering Commitee

Chairman

R.L. Scammell
Asst Deputy Minister
Justice Services
Department of Justice
Province of New Brunswick

Secretary

R.J. Fleming
Chief Registrar of Deeds and
Registrar General Land Titles
Department of Justice
Province of New Brunswick

Members

Terrance Edgett
Assoc of New Brunswick
Land Surveyors

A. Kent Robinson
NB Law Society
and
Canadian Bar Association

President
Moncton Mortgage Lenders
Association

Karyn Rogers
Moncton Barristers' Society

President
Moncton Real Estate Board

Tim Rattenbury
Coordinator Legal Research
Law Reform Branch
Department of Justice
Province of New Brunswick

C.W. MacIntosh
Director
Land Titles and Legal Services
LRIS, Halifax

Mary A. Kimball
Solicitor, LRIS
and subsequently Deputy
Registrar General Land Titles
Albert Co. Land Titles Office

Therese LeBlanc
Registrar of Deeds
Westmorland County and
initially
Deputy Registrar General
Land Titles

Donna V. Tower
Registrar of Deeds
and Land Titles
Albert County

David Wright
Solicitor, Legal Services
Department of Justice
Province of New Brunswick

Daryl Hunter
Planner
LRIS, Fredericton

Observers

J.M. Burgess
Department of Attorney General
Province of Nova Scotia

Theodore Reagh
Department of Attorney General
Province of Prince Edward
Island

ANNEX "O"

Amendments to Land Titles Act during the pilot project

Amendments to the Act, other than of a housekeeping nature, each year were as follows:

1983

A. s.11(2)(b) replaced. This specified that the abstract of title accompanying an application for first registration was to be certified in the manner prescribed by regulation, and was to show the chain of ownership dating back to the Crown grant, at least 60 years, or such lesser number of years as the Registrar General may approve, rather than dating back such number of years as may be prescribed. In effect, this set out in the Act the 60 year search standard, rather than leave it to be dealt with in the regulations.

B. s.11(2)(c) replaced. An affadavit of verification must be sworn by the applicant (the owner), not by his agent. This provision is similar to the requirements of the **Mechanic's Lien Act**, and was inserted to protect an owner from the possibility of someone else dealing with the property without his knowledge or consent.

C. s.57 was amended to provide for service of documents in a manner other than personal.

1984

A. s.12(4) was amended by deleting the requirement of giving notice of the application for first registration to the owners of lands abutting the lands in question.

B. s.12(7.1) was added to provide that if an applicant were to apply to bring the title to his land under the Act, subject to an outstanding interest or encumbrance, e.g. a mortgage which he is assuming, then the application need not be accompanied by the consent of the holder of the encumbrance and no notice need be served on him.

C. s.12(16) was amended by deleting reference to the applicant as the name in which the Certificate of Registered Ownership was to be issued following approval of an application for first registration. This was a practical consideration, since most applications would be made at the time of sale of the property, and the resulting CRO would be issued in the name of the current owner, who would be the purchaser rather than the vendor.

D. s.12(18) and s.76.1 were added to provide that the solicitor who supplied the abstract of title on an application for first registration is not liable to the system , except in the case of fraud. Without this, it was felt that the solicitor's liability would extend beyond the client for whom the search had been made.

1986

A. s.3 was amended to provide that a number assigned to an optional covenant would include a number and letter combination.

B. s.9(1.1) was added to clarify that the registrar is not required to permit inspection of applications for first registration. In effect, an abstract made by one solicitor is not made available to another.

C. s.14.1 was added to provide a procedure for bringing all the units in a condominium under the Act as soon as an application had been made for one of the units.

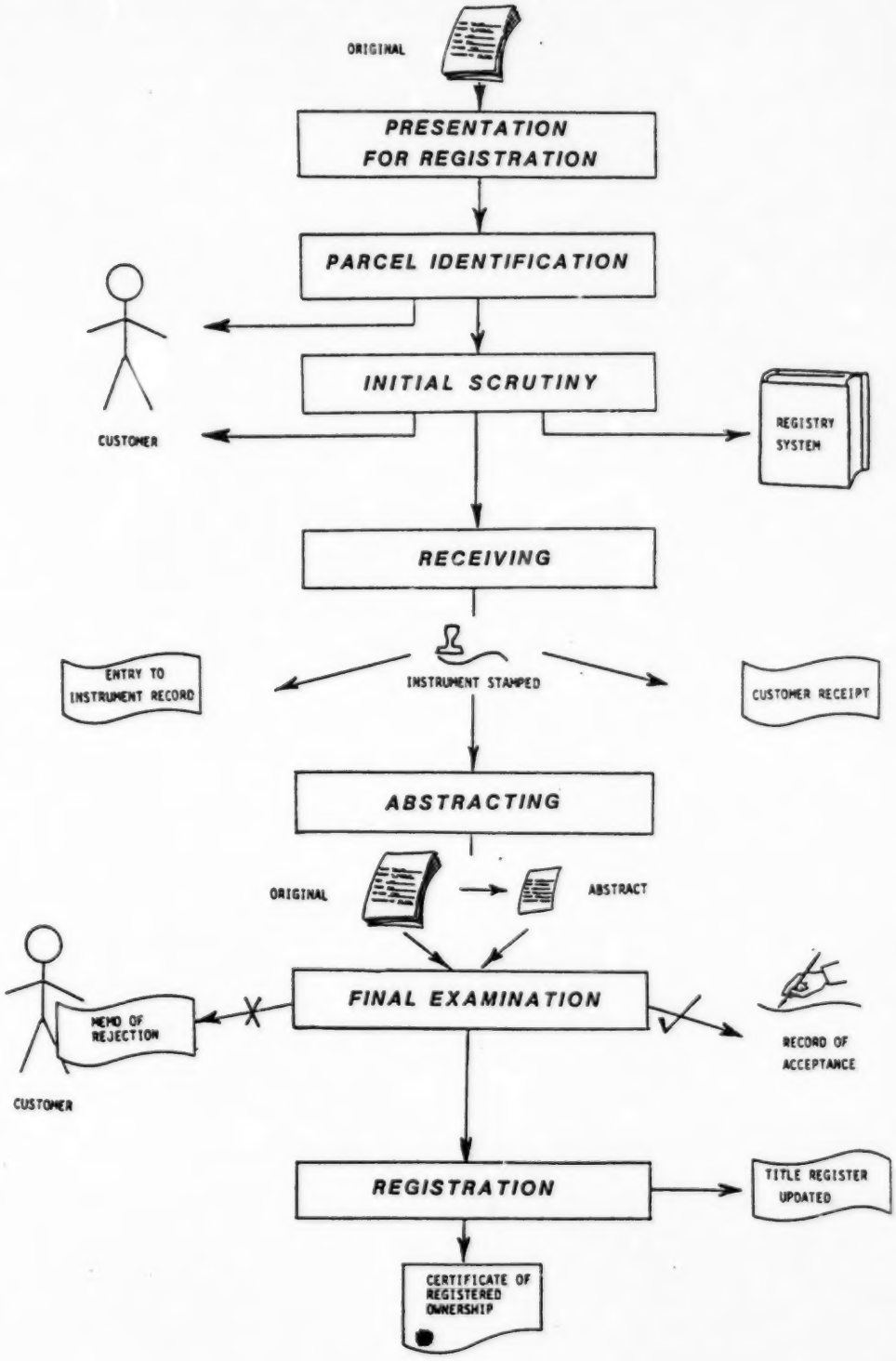
D. s.26.1 was added to deal with debentures, which had not been specifically dealt with under the Act.

E. s.29 was amended to provide that a debenture could be assigned.

F. s.57 was amended to provide that personal service under the Act could be accomplished in any manner recognized as personal service under the Rules of Court.

ANNEX "P"

Pictorial Overview of the Registration Process



Daryl Hunter 1985

ANNEX "Q"

Land Titles Pilot Project
STATISTICS
31 March 1987

			TOTAL
FIRST APPLICATIONS			
Parcels from subdivisions		217	
Other parcels		2139	
			2356
RESULTS			
Verified -- further action by Reg Gen	146		
Verified -- further action by applicant	63		
Verified -- Crown Lands	8		
Verified -- in appeal period	23		
Verified but no Certificates issued		240	
Rejected		23	
Part of parcel approved; part outstanding		3	
Condominiums		33	
Outstanding (excl Condos)		12	
Certificates issued		2045	
			2356
SUBSEQUENT TRANSACTIONS			
Transfers		501	
Mortgages		357	
Releases		404	
Plans		48	
Consents		27	
Powers of Attorney		15	
Leases		2	
Legal Aid liens		6	
Mechanics Liens		9	
Certs of Pending Litigation		8	
Easements		10	
Amendments of Mortgage		71	
Assumptions of Mortgage		52	
Agreements		2	
Assignments		15	
Ancillary Deeds of Trust and Mortgage		1	
Judgements		5	
Debentures		3	
Options		5	
Notice of Intention to Expropriate		1	
Notice of Title Register Rectification		10	
Certificates not resulting from Instrument		447	

cont'd

MISCELLANEOUS

Parcels added to registered land	5
Rejected Instruments	11
LOTS IDENTIFIED AND CONFIRMED AS TO BACK TITLE	6539
EXEMPTIONS GRANTED	141

ANNEX "R"

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